149

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901. 1902.

No. 119.

THE DIAMOND GLUE COMPANY, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES GLUE COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF WISCONSIN.

FILED JUNE 14, 1901.

(16,202.)

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 349.

THE DIAMOND GLUE COMPANY, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES GLUE COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF WISCONSIN.

INDEX.

	Original.	Print.
Caption	1	1
Præcipe for summons	1	1
Summons	2	1
Complaint	3	2
Marshal's return	12	7
Answer	12	7
Counter-claim	27	15
Reply to counter-claim	34	19
Demurrer to part of answer	37	21
Amended complaint	38	22
Order beginning trial	48	27
Order continuing trial	48	28
Order concluding trial	48	28
Verdict	48	28
Judgment	49	28

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	Original.	Print
Bill of exceptions	50	29
Opinion on demurrer	51	29
Testimony of John R. Morron	56	32
Arnold Freshman	93	53
W. H. Morehead	104	60
Arnold Freshman (recalled)	115	66
Fred Bassinger	120	69
Lester Doctor	123	70
Christian Anstedt, Jr.	126	72
Plaintiff rests	127	73
Exhibit 1—Articles of incorporation of the Diamond Glue Co. (parts omitted in printing)	128	73
2—Letter, U. S. Glue Co. to Diamond Glue Co., June 22, 1898	135	74
Proposition enclosed in foregoing letter	136	75
3*a*—Agreement between the United States Glue Co. and the Diamond Glue Co., June 25, 1898	138	75
3*b*—Letter, Diamond Glue Co. to U. S. Glue Co, June 27, 1898	141	77
4—Letter, Morron to Vogel, July 27, 1898	142	77
5—Letter, Morron to Vogel, October 27, 1898	143	78
6—Letter, Morron to Vogel, January 31, 1899	144	78
7—Letter, U. S. Glue Co. to Diamond Glue Co., January 11, 1899	145	78
7*a*—Letter, Diamond Glue Co. to U. S. Glue Co., January 12, 1899	146	79
8—Letter, U. S. Glue Co. to Diamond Glue Co., January 17, 1899	147	79
9—Letter, Morron to Vogel, February 6, 1899	148	80
9*a*—Letter, Diamond Glue Co. to U. S. Glue Co., March 23, 1899	149	80
10—Letter, U. S. Glue Co. to Diamond Glue Co., April 11, 1899	150	81
11—Letter, U. S. Glue Co. to Diamond Glue Co., May 6, 1899	151	81
12—Letter, Morron to Vogel, July 5, 1899	151	82
13—Letter, Vogel to Morron, July 7, 1899	153	82
14—Letter, U. S. Glue Co. to Diamond Glue Co., July 6, 1899	154	83
15—Letter, Diamond Glue Co. to U. S. Glue Co., July 7, 1899	154	83
16—Letter, U. S. Glue Co. to Diamond Glue Co., July 12, 1899	155	84
17—Letter, U. S. Glue Co. to Diamond Glue Co., August 5, 1899	155	84
Letter, Walburn-Swenson Co. to Vogel, August 3, 1899	156	85
Letter, Walburn-Swenson Co. to U. S. Glue Co., July 29, 1899	157	86
18—Letter, U. S. Glue Co. to Diamond Glue Co., September 2, 1899	158	86
19—Letter, U. S. Glue Co. to Diamond Glue Co., September 18, 1899	158	87

	Original.	Print
Exhibit 20—Letter, U. S. Glue Co. to Diamond Glue Co., September 21, 1899	158	87
21—Letter, Morron to Vogel, September 28, 1899	159	87
22—Letter, U. S. Glue Co. to Diamond Glue Co., October 14, 1899	160	88
23—Letter, Morron to U. S. Glue Co., Oct. 18, 1899	161	89
24—Letter, Morron to Vogel, October 27, 1899	162	90
24*a*—Letter, Diamond Glue Co. to U. S. Glue Co., October 27, 1899	163	90
25—Letter, Vogel to Morron, October 28, 1899	164	91
26—Letter, Morron to Vogel, November 3, 1899	165	91
26*a*—Letter, U. S. Glue Co. to Diamond Glue Co., November 15, 1899	167	93
26*a*—Letter, Diamond Glue Co. to U. S. Glue Co., November 16, 1899	167	94
27—Letter, Diamond Glue Co. to U. S. Glue Co., November 16, 1899	168	94
28—Letter, U. S. Glue Co. to Diamond Glue Co., November 18, 1899	169	94
28*a*—Letter, Diamond Glue Co. to U. S. Glue Co., November 20, 1899	170	95
29—Letter, U. S. Glue Co. to Diamond Glue Co., November 20, 1899	171	96
30—Letter, Diamond Glue Co. to U. S. Glue Co., November 22, 1899	173	97
30*a*—Letter, Diamond Glue Co. to U. S. Glue Co., November 24, 1899	174	98
31—Letter, U. S. Glue Co. to Diamond Glue Co., November 25, 1899	175	98
32—Letter, Diamond Glue Co. to U. S. Glue Co., November 27, 1899	175	99
32*a*—Letter, Diamond Glue Co. to U. S. Glue Co., November 27, 1899	176	99
33—Letter, U. S. Glue Co. to Diamond Glue Co., November 28, 1899	177	99
34—Letter, U. S. Glue Co. to Diamond Glue Co., December 2, 1899	178	100
35—Letter, U. S. Glue Co. to Diamond Glue Co., December 4, 1899	179	100
36—Letter, Diamond Glue Co. to U. S. Glue Co., December 5, 1899	180	101
37—Letter, U. S. Glue Co. to Diamond Glue Co., December 7, 1899	181	101
38—Letter, U. S. Glue Co. to Diamond Glue Co., December 7, 1899	182	102
39—Letter, U. S. Glue Co. to Diamond Glue Co., December 18, 1899	183	102
40—Bill, Diamond Glue Co. to Wm. Ritter & Bros., December 1, 1899	184	103
41—List of shipments by U. S. Glue Co. on sales by Diamond Glue Co	185	103
42—Manufacturing account..(omitted in printing)	189	—

	Original.	Print
Exhibit 43—Letter, Diamond Glue Co. to Fred Vogel, Jr., March 30, 1899	204	106
44—Bill, W. N. Eisendrath & Co. to J. Spiegel & Co., April 21, 1898	205	107
45—Comparative statement of cost of manufacturing glue by U. S. Glue Co. from July 25 to Nov. 4, 1899	206	108
Stipulation that plaintiff is an Illinois corporation, &c	207	108
Motion for verdict for defendant	208	109
Ruling on motion for verdict for defendant	211	110
Defendant rests	212	111
Instruction to jury	213	111
Exceptions of plaintiff	213	111
Motion for new trial	215	113
Order overruling motion for new trial	218	114
Exception of plaintiff	218	114
Judge's certificate to bill of exceptions	219	115
Assignment of errors	220	115
Petition for writ of error	225	118
Order allowing writ of error	227	119
Bond on writ of error	228	119
Clerk's certificate	230	120
Writ of error	231	121
Citation	234	122
Acceptance of service of citation	235	122
Stipulation to omit parts of record in printing	236	123

1 UNITED STATES OF AMERICA, } ss:
Eastern District of Wisconsin, }

Circuit Court of the United States for the Eastern District of Wisconsin.

At a stated term of the circuit court of the United States for the eastern district of Wisconsin, begun and held according to law, at the city of Milwaukee, on the first Monday (being the seventh day) of January, A. D. 1901—present, the Honorable William H. Seaman, district judge, presiding—among other the following proceedings were had, to wit:

DIAMOND GLUE COMPANY }
vs. } At Law.
UNITED STATES GLUE COMPANY. }

Be it remembered that heretofore, to wit, on the fifth day of February, A. D. 1900, came the above-named plaintiff, by its attorneys, Messrs. Miller, Noyes, Miller & Wahl, and filed its præcipe for a summons against the above-named defendant, together with its complaint, to be served, and bond for costs approved by the clerk; which præcipe for a summons is as follows:

Circuit Court of the United States for the Eastern District of Wisconsin.

DIAMOND GLUE COMPANY, Plaintiff, }
vs.
UNITED STATES GLUE COMPANY, Defendant. }

Issue a summons in the above-entitled cause. Complaint to be served.

(Signed) MILLER, NOYES, MILLER & WAHL,
Plaintiff's Attorneys.

To Edward Kurtz, clerk.

2 Whereupon a summons issued according to law, with said complaint annexed, as follows:

Circuit Court of the United States for the Eastern District of Wisconsin.

DIAMOND GLUE COMPANY, Plaintiff, }
vs.
UNITED STATES GLUE COMPANY, Defendant. }

[L. S.] The President of the United States of America to the said defendant:

You are hereby summoned to appear within twenty days after service of this summons, exclusive of the day of service, and defend the above-entitled action in the court aforesaid; and in case of your

failure so to do, judgment will be rendered against you according to the demand of the complaint, of which a copy is herewith served upon you.

The marshal of said district is hereby commanded to serve this summons and make due return thereto.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at the city of Milwaukee, in the eastern district of Wisconsin, this 5th day of February, in the year of our Lord one thousand nine hundred, and of the Independence of the United States the 124th.

EDWARD KURTZ, *Clerk.*

MILLER, NOYES, MILLER & WAHL,
Plaintiff's Attorneys.

P. O. address: Milwaukee, Wis.

3 *Complaint.*

United States Circuit Court, Eastern District of Wisconsin.

DIAMOND GLUE COMPANY, Plaintiff,
vs.
UNITED STATES GLUE COMPANY, Defendant.

The above-named plaintiff for its complaint herein alleges that at the several times hereinafter mentioned it was and now is a corporation duly created, organized, and existing under and by virtue of the laws of the State of Illinois, having its principal office in the city of Chicago, State of Illinois, and that it was at said times and now is a citizen of the said State of Illinois.

That at the several times hereinafter mentioned the said defendant, United States Glue Company, was and now is a corporation duly created, organized, and existing under and by virtue of the laws of the State of Wisconsin, having its principal office in the city of Milwaukee, in the eastern district of Wisconsin, and that at said times it was and now is a citizen of said State of Wisconsin, located and doing business in said eastern district of said State.

Said plaintiff further alleges that on and prior to the 25th day of June, A. D. 1898, it was engaged in the business of manufacturing, buying, selling, or otherwise disposing of and dealing in glue of different kinds and of by-products from tanneries and other establishments, and that it had factories located at various points in the States of Illinois, Indiana, Missouri, and elsewhere with branches established for carrying on its business in New York, Boston, Philadelphia, Toronto, Canada, and other places, and was and had
4 been extensively engaged in the manufacture of glue and other products and in the sale of the same from its own factories, establishments, and warehouses and from the factories and establishments owned by others located in various parts of the United States; all of which facts were well known to said defendant, its officers, agents, and stockholders.

Said plaintiff further alleges that prior to said 25th day of June, 1898, it had had large experience in the construction and operation of factories for the manufacture of glue and in the supervision and management of the same, and that its officers then possessed knowledge and experience in the construction and management of such factories and in the sale and disposition of their products and of all the raw material which is sold to or used by companies engaged in the manufacture or sale of glue or any of its bi-products, and that it possessed large facilities for selling and disposing of the same; all of which was at said time well known to said defendant, its officers, agents, and stockholders.

Said plaintiff further alleges that at some date prior to the 25th day of June, 1898, the said defendant was organized as a corporation for the purpose of purchasing or otherwise acquiring from the various tanneries located in the city and county of Milwaukee, Wisconsin, all the raw material and glue stock turned out by said tanneries at the market price, to be determined at a fixed time or times during each year, and to convert such glue stock, materials, and bi-products of said tanneries into glue at a factory to be located and erected upon some site in the vicinity of the city of Milwaukee, Wisconsin; and this plaintiff alleges upon information and belief that
5 in accordance with said arrangement contracts were then or subsequently entered into by and between said United States Glue Company when organized and all or nearly all of the companies engaged in the tannery business which were located in or near the city of Milwaukee, Wisconsin, whereby the said defendant should take and pay for all such glue stock and raw material turned out and subject to be disposed of by said tanneries at a fair market price, to be determined at the first of or at some other time during each year for a period of at least five years from the date of the construction of said factory by said defendant; that the sole or principal object of the organization of said defendant was for the purpose of enabling such companies operating tanneries in the city of Milwaukee to dispose of their glue stock of various kinds to a corporation controlled by themselves and to forestall any unnatural decline in the prices of such glue stock; that all or substantially all the capital stock of said defendant is held and owned by said tanneries or by the stockholders in the companies owning and operating the same.

Said plaintiff further alleges that on or about the 25th day of June, 1898, an agreement was entered into by and between said plaintiff and said defendant, wherein and whereby, in consideration of the mutual agreement of the parties, the said defendant agreed to erect, equip, and complete a glue factory on a site to be thereafter selected by it within sixty days from said 25th day of June, 1898, which said factory should be begun and completed by it with the least possible delay after such site should have been selected; said plaintiff agreed to advise and plan with the architect of said defendant, and to oversee and supervise the plans of said factory, and secure such economy of space and processes as might be gained from
6 the practical experience which said plaintiff had had in the operating of glue factories, and said plaintiff further agreed

to give said defendant the benefit of all of its labor-saving devices and the benefit of its knowledge and experience which it had used or acquired in the manufacture of glue. It was further agreed between the said parties that said plaintiff should have the management of the manufacturing in said factory when completed, and should operate the same for said defendant, and should furnish a superintendent for such factory, whose salary should not exceed one hundred and fifty dollars per month, and that said plaintiff, by its officers, should give said factory such personal supervision as might be necessary from time to time in the operation of the same, and that said officers should give said defendant, in the management and operation of said factory, the benefit at all times during the life of such contract of its experience and knowledge and of the experience and knowledge of its officers; that said plaintiff should keep said factory supplied with a capable superintendent at all times during the life of said contract, whose salary should not exceed the amount hereinbefore mentioned; that said plaintiff should control, handle, and sell the entire output, including glue and bi-products of said factory, and all such products should be billed and sold as the product of the defendant, but the invoices should be stamped "Diamond Glue Company, exclusive sale agents." It was further agreed between the parties hereto that beginning as soon as said factory should be in operation the said plaintiff should refrain from manufacturing either hide or calf glue at any of its said factories, and should guarantee the payment of all accounts for sales made by or through it. It was further agreed that said plaintiff should receive a
7 commission of ten per cent. of the amount of all sales of glue or bi-products, and that thereupon ten per cent. of the cost of the plant should be charged off each year for depreciation, and of the net profits remaining ten per cent. of the amount of the then capital stock should be set aside for its stockholders, and thereupon said plaintiff should receive ten per cent. of the excess of net profit over and above the said ten per cent. dividend so set aside for the stockholders of said defendant. It was further understood and agreed between said parties by said contract that the raw material sold to the said defendant by or for its stockholders should be sold to and purchased by said defendant at the fair market price for the respective grades thereof. It was further understood and agreed that said contract should cover and extend over a period of five years from the completion and the commencement of the operation of the plant so to be located and built by the defendant.

Said plaintiff further alleges that after the execution of said agreement, which was in writing and signed by the parties hereto, the said defendant selected a site for its said glue factory near the city of Milwaukee, in the county of Milwaukee and State of Wisconsin, and thereupon proceeded to erect and equip and complete said glue factory, and said plaintiff did advise and plan with the architect of said defendant and did oversee and supervise the plans of said factory so as to secure such economy of space and processes as it was able to do from its practical experience in the operation of other glue factories, and did from time to time and as required give

to said defendant the benefit of all its labor-saving devices, as well as of the knowledge and experience it had used or acquired in
8 the manufacture of glue.

Said plaintiff further alleges that the said plant was so located and constructed and was put into operation on or about the 25th day of July, A. D. 1899; that as soon as said factory was in operation said plaintiff did then refrain and has at all times since refrained from manufacturing either hide or calf glue at any of its factories, and did thereupon close down its factories before that time used for the manufacture of hide and calf glue, and has not operated the same since said date, and on account of said agreement did at great expense fit one of them for the manufacture of other kinds of glue and leased them to other parties. Said plaintiff has at all times been ready and willing to perform the terms and conditions of said contract and has in all respects fully complied with the terms and conditions of the same to be performed on its part.

Said plaintiff further alleges that upon the completion of said plant it took the management of the manufacturing therein and operated the same for said defendant and furnished a capable superintendent therefor, whose salary did not exceed one hundred and fifty dollars per month, to be paid by said defendant, and did, by its officers, give said factory such personal supervision as was necessary from time to time in the operation of the same, and by its officers did give to said defendant in the management and operation of said factory the benefit at all times during the operation of said factory by it and until the breach of the contract hereinafter mentioned of the experience and knowledge possessed by said plaintiff and by its officers in respect to the management and operation of the same.

9 Said plaintiff further alleges that upon the commencement of the operation of said factory and the manufacture of glue therein said plaintiff handled and sold all the output thereof which it was able to dispose of, including the glue and the by-products of said factory, until the breach of the contract hereinafter mentioned, and that all such products were billed and sold as the product of said defendant, but the invoices for the same were stamped "Diamond Glue Company, exclusive sale agents," as provided in said contract.

Said plaintiff further alleges that said defendant was unwilling in many cases to accept the prices obtained or offered by plaintiff for sales of lots of glue and by-products manufactured by the defendant, but, on the contrary, asserted the right to reject contracts of sale and sales made by the plaintiff in case the officers of defendant did not think the price obtained by the plaintiff adequate, and in many instances did actually refuse and fail to carry out sales and contracts of sale of glue and by-products made by plaintiff on behalf of defendant, giving as a reason therefor that the price obtained by plaintiff was not satisfactory.

Said plaintiff further alleges that it continued the operation of said plant and duly performed all the terms and conditions of said contract which it had agreed to perform until on or about the

2nd day of December, 1899, the said defendant refused to perform the terms and conditions of said contract to be performed on its part, and refused to permit said plaintiff to have the management and control of said factory and the operation thereof, and refused to permit said plaintiff to make any further sales of the output and by-products of said factory, and notified said plaintiff that the said agreement made between them was terminated and at an
10 end, and that it would not longer recognize the said agreement as existing, and thereupon refused to perform the same.

Said plaintiff alleges that there is now due and owing to it from said defendant the sum of sixteen hundred ninety-eight and $\frac{48}{100}$ dollars ($1,698.48) for and on account of commissions on sales made by said plaintiff for said defendant under and pursuant to the terms of said contract.

Said plaintiff further alleges that the services furnished by it in planning, overseeing, and supervising the construction of said factory for said defendant and in giving to said defendant the benefit of its labor-saving devices and the knowledge and experience which it had in the manufacture of glue and in the management of the manufacture and of the operation of said factory were of great value to said defendant, and which said services have not been paid for by said defendant.

Said plaintiff further alleges that it sustained great loss and damage in closing down its factories for the manufacture of hide and calf glue, in refitting the same as hereinbefore stated, in withdrawing from the glue stock market for said factories, in procuring customers for said defendant, and in refraining from manufacturing either hide or calf glue at its factories, no part of which loss and damage has been paid by said defendant.

Said plaintiff further alleges that the output of said factory so constructed and put into operation by said defendant, including its glue and bi-products, would amount to at least three million pounds of glue per year, and that the grease supplied from said factory to be sold by said plaintiff under the contract if carried out would amount to at least one and one-half million pounds per
11 year, and said plaintiff has been and will be deprived of its commissions on sales and of its profits under said contract by reason of the defendant's breach thereof.

That by reason of the premises and of the violation of said contract on the part of said defendant the said plaintiff has sustained damages in the sum of two hundred thousand dollars ($200,000).

Wherefore said plaintiff demands judgment against said defendant for the sum of two hundred thousand dollars ($200,000), with interest, besides the costs of this action.

BANCROFT & ADAMS,
MILLER, NOYES, MILLER & WAHL,
Plaintiff's Attorneys.

GEO. H. NOYES, *Of Counsel.*

STATE OF ILLINOIS, } ss:
County of Cook, }

J. R. Morron, being duly sworn, says that he is the vice-president of the above-named plaintiff, and makes this verification on its behalf; that he has read the foregoing complaint and verily believes the same to be true; that the reason why this verification is not made by plaintiff is because it is a corporation, and that none of its principal officers reside in the State of Wisconsin; that the grounds of deponent's belief on the subject are based on the contract referred to in said plaintiff's complaint and on other papers which are in the possession of deponent and from his knowledge of the transactions and from information received by him in his relations to and dealings with the parties as vice-president of said plaintiff.

(Signed) J. R. MORRON.

Subscribed and sworn to before me this 3rd day of Feb., 1900.

HARRY L. FEARING,

[L. S.] *Notary Public, Cook County, Illinois.*

12 Summons and complaint returned:

"Served on the within-named U. S. Glue Company by showing Fred Vogal, Jr., president of said company, this summons and complaint and delivering to him, personally, a copy thereof this 8th day of February, A. D. 1900.

THOMAS B. REID, *Marshal,*
By W. N. DURBIN, *Deputy.*"

Fees, $2.36.

FEBRUARY 23, 1900.

This day came the defendant, by its attorneys, Messrs. Quarles, Spence & Quarles, and filed its answer as follows:

Answer.

United States Circuit Court, Eastern District of Wisconsin.

DIAMOND GLUE COMPANY, Plaintiff, }
vs.
UNITED STATES GLUE COMPANY, Defendant. }

Now comes the above-named defendant, United States Glue Company, by Quarles, Spence & Quarles, its attorneys, and for answer to the complaint of the plaintiff herein—

Admits that said plaintiff is and at all the times mentioned in the complaint herein was a corporation, created, organized, and existing under and by virtue of the laws of the State of Illinois, having its principal office in the city of Chicago, in said State, and that it was and is a citizen of said State of Illinois; that this defendant is and at all times mentioned in said complaint was a corporation duly created, organized, and existing under and by virtue of the laws of the State of Wisconsin, having its principal office in the city of

Milwaukee, Wisconsin, and that it was and is a citizen of said State of Wisconsin, located and doing business in the eastern district thereof.

13 This defendant alleges on information and belief that the said plaintiff was organized and incorporated for the purpose of manufacturing glue and by-products, and that it had or operated glue factories located in the city of Chicago, in the State of Illinois, and in the city of Madison, in the State of Indiana, but this defendant denies on information and belief that the said plaintiff is or ever was authorized or empowered, by its charter or otherwise, to do any business other than manufacturing and disposing of the products of its own manufacture; and on information and belief denies that it was ever empowered or authorized, by its charter or otherwise, to superintend or agree to superintend the construction of any factory or factories other than its own or to act as broker, factor, or sales agent for any other person, persons, or corporation or to do or agree to do any other business than such manufacture and the disposal of its own products; and this defendant denies on information and belief that the said plaintiff ever had power or authority to make or carry out the contract set out in the said complaint, and alleges on information and belief that the said contract was *ultra vires* on the part of the said plaintiff and void.

And this defendant alleges that its factory was and is located within the State of Wisconsin and its business is and was at all times transacted in the said State; that prior to the first day of September, 1898, this defendant had transacted no business with others than its own members, except partially planning and making certain contracts for the construction of its said factory and acquiring a site therefor, and that practically all things which were done or attempted to be done by the said plaintiff under the contract

14 set out in the complaint were done by it after the 1st day of September, A. D. 1898.

And this defendant alleges that said plaintiff has never filed or caused to be filed in the office of the secretary of state of the State of Wisconsin any copy of its charter, articles of association or incorporation, or in any way complied with the statutes of the State of Wisconsin in regard to foreign corporations, or in any way complied with or performed any of the provisions of section 1770*b* of the Revised Statutes of the State of Wisconsin for the year 1898; that by said section of the said statutes it was and is made a penal offense for any corporation incorporated or organized otherwise than under the laws of the State of Wisconsin to transact any business or acquire, hold, or dispose of any property in the State of Wisconsin until such corporation shall have caused to be filed in the office of the secretary of state of said State a duly authenticated copy of its charter or articles of association or incorporation; that each and every act of the said plaintiff under the said alleged contract, after the 1st day of September, A. D. 1898, was done by it in violation of the laws of the State of Wisconsin, and that the said contract was and is wholly void as to and on behalf of said plaintiff, and that it has and can have no cause of action arising therefrom, for that each

and every act of the said plaintiff, under and in pursuance of the said contract, was transacting business or acquiring, holding, or disposing of or attempting to acquire, hold, or dispose of property in the State of Wisconsin contrary to the laws thereof.

This defendant admits that on and prior to the 25th of June, 1898, said plaintiff was engaged in the business of manufacturing, selling, and dealing in glue of different kinds and of its by-products,
15 and that it had factories located at various points, but as to what points other than the cities of Chicago and Madison this defendant has no knowledge or information sufficient to form a belief.

This defendant admits that said plaintiff represented, as an inducement to this defendant to enter into the said contract, that said plaintiff was well equipped with branches for carrying on its business at various places, and that it was and had been extensively engaged in the manufacture of glue and other products and in the sale of the same from its own factories, establishments, and warehouses; and this defendant alleges that in order to induce this defendant to enter into said contract said plaintiff represented that on account of its experience and the experience of its officers and employés it could and would design for this defendant a factory and the equipments thereof, by means of which good and merchantable glue could be manufactured at a maximum cost of two and one-half cents per pound, and that said plaintiff then so represented and led this defendant to believe that its said representations were based upon its, said plaintiff's, wide experience and peculiar knowledge of the process and cost of the manufacture of glue derived by it from its own operations at its own factories; that said plaintiff at said times, as such inducement to enter into the said contrret, represented to this defendant that it, said plaintiff, and its officers had great and peculiar knowledge, experience, and skill not possessed by this defendant in and about the said matters, and represented and induced this defendant to believe that the designs, plans, appliances, and equipments which the said plaintiff would devise for the said factory would have a capacity for the production of glue and would produce glue at a maximum cost of manufacture of two and one-half
16 cents per pound, and further represented, as such inducement, that the experience and knowledge and skill of the said plaintiff and its officers were such that said plaintiff could readily place the output of the said factories upon the market and sell the same on the most advantageous terms and at prices higher than would be procured without their intervention.

And this defendant admits and alleges that prior to said 25th day of June, 1898, said plaintiff had and as an inducement to this defendant to enter into the said contract represented that it had had large experience in the construction and operation of factories for the manufacture of glue and in the supervision and management of the same, and so represented that its officers then possessed knowledge and experience in the construction and management of such factories and in the sale and disposing of their products and of all the raw material which is sold to or used by companies engaged in

the manufacture or sale of glue or any of its by-products, and that it possessed large facilities for selling and disposing of the same; and this defendant alleges that by reason of its belief of and reliance upon said representations it was induced to enter into and did enter into the said contract.

This defendant admits that in the month of June, 1898, it was organized as a corporation for the purpose of erecting a glue factory in the county of Milwaukee, Wisconsin, and thereby utilizing the raw material and glue stock turned out by the tanneries which were interested or to become interested in this defendant and for the purpose of manufacturing into glue and its by-products the said raw material and glue stock for the benefit of the owners of the said tanneries who should become stockholders in this defendant,
17 and that in accordance with such arrangement contracts were entered into with certain of said tanneries for one year and no longer, and with one of said tanneries for a period of ten years, by which arrangements the glue stock and raw material turned out by said tanneries were to be taken by this defendant at a fair market price to be determined at stated times.

This defendant alleges that the principal object of the organization of this defendant was to enable the owners of the various tanneries interested therein to manufacture into glue and its by-products their own glue stock and thereby acquire to themselves the profit of said manufacture, if any there should be.

This defendant admits that substantially all its capital stock is held or owned by tanneries in the State of Wisconsin or by the stockholders in the companies owning and operating the same.

This defendant admits and alleges that on or about the 25th day of June, 1898, a written agreement was drawn by the said plaintiff and tendered to this defendant with a request from said plaintiff that it be immediately executed, and that without submitting or having an opportunity to submit the same to its counsel this defendant executed the same, and that the said contract was entirely drawn by said plaintiff or by counsel learned in the law engaged by it for that purpose, and that the said contract is in the words and figures following, to wit:

This agreement entered into this twenty-fifth day of June, 1898, by and between the United States Glue Company, a corporation organized under the laws of Wisconsin, and having its home office in the city of Milwaukee, State of Wisconsin, party of the first part, and Diamond Glue Company, a corporation organized under
18 the laws of Illinois, and having its home office in the city of Chicago, State of Illinois, party of the second part, witnesseth:

For and in consideration of the agreements hereinafter contained, the party of the first part agrees to erect, equip and complete a glue factory on the site to be selected hereafter by party of the first part.

Party of the second part agrees to advise with, and plan with the architect of party of the first part, and to oversee and supervise the plans of said factory, and to secure such economy of space and processes as may be gained from the practical experience the party of the second part has had in the operating of three glue factories;

and party of the second part further agrees to give party of the first part the benefit of all its labor-saving devices, and the benefit of its knowledge and experience used or acquired by it in the manufacture of glue.

It is agreed that the site shall be selected by party of the first part within sixty days from the signing of this contract, and that the factory shall be begun and completed with the least possible delay after the site is selected.

It is further agreed that party of the second part shall have the management of the manufacturing in said factory, and shall operate the same for party of the first part and furnish a superintendent whose salary shall not exceed $150.00 per month to party of the first part, and that party of the second part, by its officers, shall give said factory such personal supervision as may be necessary from time to time in the operation of the same, and said officers will give party of the first part, in the management and operation of said
19 factory, the benefit, at all times during the life of this contract, of the experience and knowledge of said officers and their company.

Party of the second part agrees to keep said factory supplied with a capable superintendent at all times during the life of this contract, whose salary shall not exceed the amount hereinbefore stated.

It is further agreed that party of the second part shall control, handle and sell the entire output, including glue and by-products, of said factory, and all such products shall be billed and sold as the product of the United States Glue Company, but it is agreed that all invoices shall be stamped, "Diamond Glue Company, exclusive sale agents."

During the life of this agreement, beginning as soon as said factory is in operation, party of the second part is to refrain from manufacturing either hide or calf glue at any of their factories.

Party of the second part guarantees the payment of all accounts for sales made by or through it.

It is further agreed that party of the second part shall receive a commission of ten per cent. on all sales of glue or by-products; thereupon ten per cent. of the cost of the plant shall be charged off each year for depreciation; of the net profits remaining, ten per cent. upon the present capital stock shall be set aside for the stockholders; thereupon party of the second part shall receive ten per cent. of the excess of net profits over and above the ten per cent. dividend.

It is understood and agreed that the raw material sold to the United States Glue Company by or for its stockholders, is to
20 be sold to and purchased by said glue company at the fair market price for the respective grades.

This contract is to cover a period of five (5) years from the completion and commencement of the operation of the plant.

(Signed) UNITED STATES GLUE COMPANY,
By FRED VOGEL, JR., *President.*
C. ANSTEDT, JR., *Secretary.*
DIAMOND GLUE COMPANY.
J. R. MORRON, *Vice-President.*

6, 27, '98.

United States Glue Co., Milwaukee, Wis.

GENTLEMEN: Confirming our verbal understanding of the amendment to the agreement signed by the Diamond Glue Company and the United States Glue Company on the 25th inst., we herewith make it a part of agreement above mentioned. In addition to the ten per cent. excess profits that the Diamond Glue Company is to have, it is further agreed and understood that on all excess over and above $25,000 the Diamond Glue Company shall have twenty per cent. of the same.

Kindly confirm this by letter, so that we may attach it to the contract.

Yours very truly,

DIAMOND GLUE CO.
J. R. MORRON, *Manager.*

This defendant admits and alleges that after the execution of the said agreement this defendant selected a site for its said glue factory in the county of Milwaukee, Wisconsin, and thereupon, after the 1st day of September, 1898, proceeded, in all things under the advice and supervision of the said plaintiff, to erect, equip, and complete the said glue factory; that said plaintiff did advise and plan
21 with the architect of this defendant and did oversee and supervise and in all respects control the plans of said factory, and that said plaintiff in all things planned and dictated and controlled the planning, building, and equipment of the said factory; that said plant was put into operation on or about the 26th day of July, A. D. 1899, and said plaintiff thenceforward took the management of and managed the manufacturing in said plant, and operated said plant for this defendant, and furnished superintendents therefor, to be paid and which were paid by this defendant, and did supervise and control the operation of the said factory.

That said plaintiff never has been able to make the said factory produce glue and never has produced glue therein at a manufacturing cost of less than three and one-half cents per pound, and that the failure of said plaintiff to fulfill its representations hereinbefore set out in regard to the cost of the manufacture of such glue proceeded either from the fact that its said representations in that regard were false and untrue and at all times known by it to be false and untrue, or from negligence of said plaintiff resulting in defects in the planning and equipment of the said factory by said plaintiff, and from the circumstance that the superintendent of said factory furnished by said plaintiff to said defendant was, as was the fact, incapable and had not capacity or ability sufficient to manage the said business, or, as this defendant is informed and believes, from all of the said reasons concurring.

And this defendant alleges that the said plaintiff breached the said contract and failed in the performance of the duty imposed upon it by said contract in many respects, and particularly in these:

22 That said plaintiff improperly and insufficiently designed, planned, and equipped the said factory and conducted the

construction and management of the same, so that much of the glue stock of this defendant was wasted and greatly impaired in value, and so that much of the glue manufactured at said factory was of inferior quality and worth much less than it would have been if it had been properly manufactured, and that by reason of the said defaults of the said plaintiff this defendant has been obliged to enlarge and change, and has enlarged and changed, and is still enlarging and changing the plan and equipment of the said factory, and has lost great sums of money by reason of such improper manufacture, all to its great loss and damage.

And this defendant alleges that up to the 1st day of December, A. D. 1899, the said plaintiff, unmindful of the obligation which it had assumed to sell the entire output of the said factory, failed, neglected, and refused to sell said output or to sell more than nineteen per cent. thereof, and continually allowed over eighty per cent. of the said output of glue to accumulate in the said factory unsold, until on said 1st day of December, 1899, there had so accumulated and remained in and upon the hands of this defendant at least 589,000 pounds of glue, of the value of upwards of $80,000, and that upon said date and at all times said plaintiff refused and neglected to sell the same or to indicate when the same could or would be sold, and acknowledged that as to the said accumulation and as to an equal proportion of accumulation in the future it was not only powerless to move or sell the same, but was also powerless to give any assurances in regard to the sale of the same; that said plaintiff then claimed that this defendant should, nevertheless, go on
23 manufacturing and accumulating such unsold glue, and said plaintiff then and there denied that any obligation rested upon it to sell any more of the said product than it saw fit; and this defendant alleges on information and belief that said plaintiff at all the said times was engaged in the sale of glue from other factories owned or controlled by it, and sold such output to the neglect of the output of this defendant's factory, and in violation of the obligations imposed upon it by said contract sold first the products of the said other factories and kept the product of defendant's said factory out of the market, and refrained from attempting to sell the same, for the purpose of advancing the prices and facilitating the sale of the said products of said other factories, and that at all said times said plaintiff betrayed and neglected the interests of this defendant, and in these regards subordinated them to adverse interests existing in favor of said plaintiff, and used the said output of this defendant's said factory solely for the purpose of manipulating the market for its, said plaintiff's, own profit and to the great loss and damage to this defendant, and failed and neglected in all respects to perform its duty as sales agent of this defendant.

And this defendant alleges that at all times the said plaintiff so managed the manufacturing at this defendant's said factory and the sale of its products that a constant and enormous loss was imposed and was being imposed and was threatened to be continuously imposed upon this defendant, in that the cost of manufacture was much greater than it would have been had the said factory been properly

equipped and properly managed, and in that the prices procured by said plaintiff for such of said product as it sold were, as
24 this defendant is informed and believes, nearly uniformly under the market price of such product and were below its actual cost; that the said plaintiff in but few instances secured prices for said products which covered the cost thereof; and this defendant alleges that every day that the said plaintiff continued in control of the said factory and its product great money loss was entailed upon this defendant by reason of the fact that said plaintiff sold and was selling and threatened to continue to sell said product at less than the cost of its production.

And this defendant alleges that on or about the 1st day of December, 1899, this defendant informed said plaintiff that by its control of said factory and its output, and its failure to sell the said output, and its manifold breaches of the said contract, it had become and would be impossible for the said defendant to continue the operation of the said factory on account of the great losses that were constantly being made through its said operation, and because under the management of the said plaintiff it appeared and was clear that such losses would be continuous. This defendant therefore stated to the said plaintiff that either the factory must be shut down indefinitely and manufacture therein cease or the management of such factory and the sale of its output must be taken away from the said plaintiff, and that said defendant would no longer continue the operation of the said factory at a great loss for the benefit solely of said plaintiff; that therefore and thereupon this defendant, because of the said conduct of the said plaintiff and its manifold breaches of the said contract, notified the said plaintiff that it would no
25 longer recognize the existence of said contract, and that thereupon this defendant refused and has ever since refused to recognize the said contract or to permit the plaintiff to act thereunder.

This defendant admits that the products of said factory were billed and sold as the product of this defendant, and that the invoices for the same were stamped "Diamond Glue Company, exclusive sale agents," as provided in said contract.

This defendant denies that it ever refused to recognize and consummate any sales made by the said plaintiff, although the fact was that it believes and still believes that many of such sales were made by said plaintiff under the actual market price of the said product at the times that such sales were made. But this defendant alleges that it did refuse to permit the said plaintiff to use its, said defendant's, product to fill contracts made by the said plaintiff on its own account before the date of its said agreement with this defendant at prices much below the market prices obtaining at the time the said plaintiff so attempted to fill such contracts, and that this defendant did refuse to permit said plaintiff to sell this defendant's products to itself—that is, to said plaintiff—and on one occasion refused to sell such product to said plaintiff at prices fixed by said plaintiff.

On information and belief this defendant denies that the said plaintiff closed down its factories or any of them, or caused them or

any of them to cease to operate, or fitted either or any of them for the manufacture of other kinds of glue. On the contrary, this defendant alleges on information and belief that said plaintiff, in violation of the spirit and terms of the said contract so made
26 with this defendant, leased certain of its factories to other parties, and through its tenants continued the manufacture of mixed glue, so called, which is a kind of glue composed of hide glue and bone glue, and that said plaintiff, in violation of the spirit and terms of the said agreement, at all times controlled and sold the output of all of the said factories, and that said plaintiff, while its said said agreement with this defendant was in force, made a contract with the Gaenzlein & Fischer Glue Company, of Gowanda, New York, to take the factory of the said company, which had capacity larger than the aggregate capacity of said two factories of the said plaintiff at Chicago and Madison, and that thenceforward said plaintiff manufactured hide and calf glue at the said Gowanda factory and sold such product in active competition with the product of this defendant, and in such dealings and sales subordinated the interests and rights of this defendant to those of the plaintiff, to the great loss and injury of this defendant and in violation of its, said plaintiff's, duty to this defendant.

This defendant admits that there are unpaid commissions upon sales made by said plaintiff amounting to $1,639.13 and no more, but alleges that such commissions are not yet due or payable.

This defendant on information and belief denies that the said plaintiff sustained any loss or damage whatever in closing down its factories or any of them, or in refitting them or any of them, or in any other way, by reason of anything mentioned in the said contract or any act or refusal to act on the part of this defendant.

This defendant denies that the output of its said factory would, if the said agreements had continued in force, have amounted to any amount of glue or grease whatever, and alleges that the said factory would in that event have produced no glue or grease
27 whatever, and alleges that the said plaintiff has lost nothing whatever by the termination of the said agreement and has been in no way injured or damaged thereby, and that it was informed by said plaintiff and verily believes that all the commission provided for by said agreement on account of sales to be made by said plaintiff would have been consumed in the expenses attending the making of such sales.

This defendant, further answering, denies each and every allegation in said complaint contained not hereinbefore specifically admitted or denied.

And for further answer and by way of counter-claim this defendant alleges—

That this plaintiff, on or about the 25th day of June, A. D. 1898, made, entered into, and executed to and with this defendant the written contract hereinabove set out, to which this defendant begs leave to refer with the same effect as though the said contract were set out again at length in this counter-claim.

That thereupon the said plaintiff entered upon the performance

of the said contract, and planned and supervised and directed in all things the construction and equipment of said factory, which was built by this defendant between said date and the 26th day of July, A. D. 1899, and that said plaintiff and this defendant acted under the said contract until about the 1st day of September, 1899.

I.

And for a first counter-claim and first separate cause of action against said plaintiff this defendant alleges—

That it was contemplated between the said parties that the glue and grease which were to be manufactured in the said factory
28 were to be produced from fleshings and hide trimmings and other similar glue stock to be produced from the tanneries operated by the stockholders of this defendant or tanneries in which such stockholders were interested.

That at all times the said plaintiff had had experience in the manufacture of glue, and held itself out to this defendant as having had wide and peculiar experience and having wide and peculiar knowledge of all of the steps and processes necessary or usually followed in the manufacture of glue and its by-products, and that said plaintiff at all times well knew, as the fact was, that this defendant had not or had any of its stockholders or officers any experience or skill in the matter of the said processes of manufacture; that said plaintiff at all times knew, as the fact was, that before the said fleshings, trimmings, and glue stock could be manufactured into glue certain preliminary treatment of such trimmings, fleshings, and glue stock was necessary, and, among other things, that said substances, in order to be turned into high-grade and valuable glue, must be treated for a considerable time in liming vats and be put through other processes; that at all said times said plaintiff knew of the proposed and contemplated capacity of such factory and of the quantity of such fleshings, trimmings, and glue stock which would be produced continually by the said tanneries, and well knew, as the fact was and is, that at least six hundred liming vats were necessary for such preliminary treatment of such substances in order that the product of glue therefrom might be of high grade and valuable, but that said plaintiff, nevertheless, so negligently, improperly, and unskillfully planned and constructed the said factory that its appliances, and particularly its liming vats, were insufficient in number and capacity to properly prepare and care for the
29 fleshings, trimmings, and glue stock required and so known to it to be required and contemplated to be used and which were actually used in said factory, or to put the same in proper condition to be used in the manufacture of glue and grease, and that said plaintiff actually caused to be constructed in the said factory only three hundred of such vats, which were totally insufficient in capacity for said purposes, and that by reason of such insufficiency it became and throughout the continuance of the said contract was impracticable to utilize such trimmings, fleshings, and glue stock to their full extent, or to produce therefrom the amount of glue and grease which would have been produced therefrom if such

substances had been or could have been treated in proper vats and appliances.

That the waste and loss of production which resulted to this defendant from the said acts and defaults and negligence of the said plaintiff amounted in value to $5,000, as this defendant is informed and believes, and that this defendant has been since said last date compelled to build and is now building at great expense additional appliances and liming vats, all to this defendant's damage $20,000.

II.

And for a further and separate and second counter-claim and cause of action this defendant, again referring to the said contract hereinbefore set out with the same force and effect as though the same were herein set out at length, alleges:

That while said factory hereinbefore mentioned was in process of construction under said plaintiff's supervision said plaintiff agreed for a valuable consideration with this defendant to care for and save all its fleshings, trimmings, and glue stock which were ac-
30 cumulating or should accumulate upon its hands or come to it by reason of its contracts or arrangements with the various tanneries in which this defendant's stockholders were respectively interested until said factory should be in operation, and agreed that until said date the said plaintiff would buy or market, at remunerative prices, all of such fleshings, trimmings, and glue stock as it, said plaintiff, could not save or preserve for use and consumption as material in said factory after it should have been put in operation.

But that said plaintiff failed and neglected to comply with or fulfill its said agreement, but allowed said fleshings, trimmings, and glue stock to accumulate upon the hands of this defendant, and neglected to sell or properly treat or care for the same, and permitted said fleshings, trimmings, and glue stock to become decayed and deteriorated from age and neglect and improper treatment, and so become very much impaired in value, to this defendant's damage $20,000.

III.

And for a third and separate counter-claim or cause of action against said plaintiff this defendant, again referring to the said contract with the same force and effect as though the same were again herein fully set out, alleges:

That the said factory in said complaint mentioned was ready for operation and went into operation about July 26th, 1899, and was thenceforward until the first day of December, 1899, operated under the supervision of the said plaintiff, pursuant to the terms of said contract; that in and by the said contract said plaintiff had obligated itself to sell the whole of the output of glue and by-products to be produced by said factory, but that, in violation of the
31 said contract and of its duty in that regard, the said plaintiff during the whole of said time failed and neglected to sell the output of said factory or any part thereof, save and except only the

grease, and not to exceed nineteen per centum of the glue produced therein, and failed and neglected to make any diligent or efficient effort to sell the same, although, as this defendant is informed and believes, all or at least eighty per centum of said product of glue could have been sold by said plaintiff at fair prices, remunerative to this defendant, if it had honestly made effort to sell the same and had not sold the products of other factories while it held the said products of this defendant's said factory unsold.

On information and belief this defendant alleges that at all said times said plaintiff wilfully and negligently refrained from selling or attempting to sell defendant's said output of glue to a greater extent than is hereinabove stated, although said plaintiff was at all said times continually carrying on the manufacture of glue in said factory to its full capacity, and such glue so unsold was constantly accumulating in said factory, and that at all said times said plaintiff was indirectly manufacturing and directly selling large quantities of such glue in and from factories other than that of this defendant.

That by reason of said defaults of said plaintiff this defendant was obliged to carry unsold, and did so carry unsold, glue so produced each month of the value of upwards of $20,000, and for such purpose to lose the interest on said sums, and storage, insurance, and other necessary charges on said product, and depreciation in market price intervening, all to this defendant's damage $15,000.

32 And this defendant alleges on information and belief that at all said times said plaintiff failed to exercise reasonable diligence in and in regard to the sale of the said output of this defendant's said factory or to procure proper prices for such of the said product as it, said plaintiff, sold, and that said plaintiff, for much of the said products or output of defendant's said factory which was actually sold by said plaintiff, negligently and in violation of its duty failed to procure prices equal to or as large as the market prices of such product prevailing at the times of such sales, and failed to procure as good prices as it could have procured by the exercise of proper diligence and honest effort, to this defendant's damage $2,000.

IV.

And for a fourth and separate counter-claim and cause of action against said plaintiff this defendant, again referring to the said contract with the same force and effect as though the same were again herein fully set out, alleges:

That said plaintiff failed and neglected to furnish to this defendant a capable superintendent for said defendant, but that the superintendent of said factory which said plaintiff furnished to this defendant, and whom, under the direction of the said plaintiff, controlled the operations of said factory, was inefficient and incapable of properly operating said factory, or of manufacturing glue of an uniformly high grade, or of operating the said factory economically and manufacturing such products therein as cheaply as they would have been manufactured by a capable and efficient superintendent.

And this defendant alleges on information and belief that by reason of the incapacity and inefficiency of the said superintendent so furnished for said factory by said plaintiff, and who so
33 operated the said factory under said plaintiff's control and direction, the cost of the manufacture of the glue and other products turned out at said factory was much greater than it would have been had said plaintiff furnished a capable and efficient superintendent and properly managed the manufacturing processes in said factory, and much of the said product was, by reason of its improper manufacture, inferior in quality and worth much less than it would have been if it had been properly and skillfully manufactured, to this defendant's damage $3,000.

Wherefore this defendant prays that the complaint of the plaintiff be dismissed, and that this defendant recover of said plaintiff damages in the sum of $60,000, besides the costs and disbursements of this action.

QUARLES, SPENCE & QUARLES,
Milwaukee, Wisconsin, Defendant's Attorneys.

STATE OF WISCONSIN, } ss:
Milwaukee County, }

Fred Vogel, Jr., being first duly sworn, on oath deposes and says that he is an officer of the above-named plaintiff, to wit, the president thereof, and makes this verification on its behalf, being duly authorized so to do; that he has read the above and foregoing answer and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated upon information and belief, and as to those matters he believes it to be true.

(Signed) FRED VOGEL, JR.

Subscribed and sworn to before me this 21st day of February, A. D. 1900.

A. B. CAHILL,
[SEAL.] *Notary Public, Milwaukee County, Wisconsin.*

34 March 14, 1900.—This day came the plaintiff, by its attorneys, and filed its reply and demurrer as follows:

Reply to Counter-claim.

United States Circuit Court, Eastern District of Wisconsin.

DIAMOND GLUE COMPANY, Plaintiff,
vs.
UNITED STATES GLUE COMPANY, Defendant.

Now comes the above-named plaintiff and replies to that part of the defendant's answer herein purporting to set up a counter-claim as follows:

First. For a reply to the first counter-claim alleged in the defendant's answer, said plaintiff admits that the glue and grease to be

manufactured in the factory erected by the defendant were to be produced in whole or in part from fleshings and hide trimmings and other similar glue stock to be produced from the tanneries operated by the stockholders of said defendant, or in which such stockholders were interested, and that said plaintiff agreed, in the contract referred to in the plaintiff's complaint herein, to give to said defendant the benefit of its labor-saving devices and of its knowledge and experience used or acquired by it in the manufacture of glue, and to advise and plan with the architect of said defendant, and to oversee and supervise the plans of its factory, and to do all other things mentioned and specified in said agreement, but this plaintiff denies that it agreed or that it was authorized by said contract to plan or construct the said factory, and alleges that the plans of said factory were adopted by said defendant, and that the
35 number of vats therein were limited to three hundred and eight by the said defendant, and that the limiting of the number of vats to three hundred and eight and any and all insufficiency in the number of vats and their capacity or in the power to operate the said factory, or any other defects in the planning or construction of the same, were due wholly to the direction and action of said defendant, and were not in anywise caused by the failure of said plaintiff to perform the said contract in accordance with the terms thereof.

And for further reply to said first counter-claim this plaintiff denies each and every allegation therein contained, except as hereinbefore admitted, qualified, or explained.

Second. And for a reply to the second counter-claim and cause of action set forth in the defendant's answer said plaintiff denies each and every allegation therein contained.

Third. And for reply to the third counter-claim and cause of action stated in said answer said plaintiff admits that the said factory of the defendant was not ready for operation until on or about the 26th day of July, 1899, and that thereafter until the breach of the contract mentioned in the complaint it, said plaintiff, operated the same under and pursuant to the terms of said contract, and that during the time of said operation it handled and sold all the output thereof which it was able to dispose of, including the glue and by-products of said factory, but that said defendant was unwilling in many cases to accept the prices obtained by or offered by said plaintiff for sale of lots of glue and by-products manufactured by said defendant, and asserted the right to reject contracts of
36 sale and sales made by plaintiff in case its officers did not think the prices obtained by plaintiff adequate, and did even actually refuse to carry out contracts and sales of glue made by plaintiff on behalf of said defendant, giving as a reason therefor that the price obtained by the plaintiff was not satisfactory.

And for further reply to said counter-claim said plaintiff denies each and every allegation therein contained, except as hereinbefore expressly admitted, qualified, or explained.

Fourth. Said plaintiff, for reply to the fourth counter-claim and

cause of action set forth in the defendant's answer, denies each and every allegation contained therein.

Wherefore this plaintiff prays that the said several counter-claims be dismissed, and that this plaintiff recover of said defendant as prayed for in its complaint herein, besides the costs and disbursements of this action.

BANCROFT & ADAMS,
MILLER, NOYES, MILLER & WAHL,
Plaintiff's Attorneys.

GEORGE H. NOYES, *Of Counsel.*

STATE OF ILLINOIS, }
Cook County, } *ss:*

Arnold Freshman, being duly sworn, deposes and says that he is an officer, to wit, the secretary and treasurer, of said plaintiff, and makes this verification on its behalf and is duly authorized so to do; that he has read the foregoing reply and knows the contents thereof, and that the same is true to his own knowledge, except as to the matters therein stated upon information and belief, and as to those matters he believes it to be true; that the reason why this verification is not made by the plaintiff is because said plain-
37 tiff is a corporation and affiant is an officer thereof, acquainted with the facts; that his knowledge upon the subject is based upon documents in his possession and his relations with said plaintiff as such officer thereof.

(Signed) ARNOLD FRESHMAN.

Subscribed and sworn to before me this seventh day of March, A. D. 1900.

[L. S.] HARRY L. FEARING,
Notary Public, Cook County, Illinois.

Demurrer to Part of Answer.

United States Circuit Court, Eastern District of Wisconsin.

DIAMOND GLUE COMPANY, Plaintiff, }
vs.
UNITED STATES GLUE COMPANY, Defendant. }

Now comes the above-named plaintiff and demurs to each and every part of that portion of the answer of said defendant served herein, included between the fifth and ninth folios thereof, purporting to allege as a defense herein that the contract set out in plaintiff's complaint herein was void, and that no cause of action arose in favor of said plaintiff against said defendant by reason of the provisions of section 1770*b* of the Revised Statutes of the State of Wisconsin for the year 1898 for the reason that that portion of said

defendant's answer and the facts therein stated are not sufficient to constitute a defense in whole or in part to this action.

BANCROFT & ADAMS,
MILLER, NOYES, MILLER & WAHL,
Plaintiff's Attorneys.

GEO. H. NOYES, *Of Counsel.*

38 April 26, 1900.—This day came the parties, by their counsel, Mr. Geo. H. Noyes appearing for the plaintiff, and Mr. Chas. Quarles for the defendant, and the demurrer of the plaintiff to the answer of the defendant came on to be heard and was argued by said counsel and submitted, when the court took the same under consideration.

May 8, 1900.—This day came the parties, by their counsel, and on consideration of the demurrer of the plaintiff to portions of the answer of the defendant it is ordered by the court that said demurrer be, and hereby is, overruled (an opinion of the court being filed, found at pages 53 to 56 of this Record).

July 7, 1900.—This day came the parties, by their counsel, Mr. Geo. H. Noyes appearing for the plaintiff, and Mr. Geo. Lines for the defendant, and the plaintiff, by leave of the court, filed an amended complaint, and by consent it is ordered that the defendant answer the same within twenty days unless it elects to stand by its answer heretofore filed.

Which amended complaint is as follows:

Amended Complaint.

United States Circuit Court, Eastern District of Wisconsin.

DIAMOND GLUE COMPANY, Plaintiff,
vs.
UNITED STATES GLUE COMPANY, Defendant.

The above-named plaintiff for its amended complaint herein alleges that at the several times hereinafter mentioned it was and now is a corporation duly created, organized, and existing under and by virtue of the laws of the State of Illinois, having its principal office in the city of Chicago, State of Illinois, and that it was
39 at said times and now is a citizen of the said State of Illinois.

That at the several times hereinafter mentioned the said defendant, United States Glue Company, was and now is a corporation duly created, organized, and existing under and by virtue of the laws of the State of Wisconsin, having its principal office in the city of Milwaukee, in the eastern district of Wisconsin, and that at said times it was and now is a citizen of said State of Wisconsin, located and doing business in said eastern district of said State.

Said plaintiff further alleges that on and prior to the 25th day of June, A. D. 1898, it was engaged in the business of manufacturing, buying, selling, or otherwise disposing of and dealing in glue of dif-

ferent kinds and of by-products from tanneries and other establishments, and that it had factories located at various points in the States of Illinois, Indiana, Missouri, and elsewhere, with branches established for carrying on its business in New York, Boston, Philadelphia, Toronto, Canada, and other places, and was and had been extensively engaged in the manufacture of glue and other products and in the sale of the same from its own factories, establishments, and warehouses and from the factories and establishments owned by others located in various parts of the United States, all of which facts were well known to said defendant, its officers, agents, and stockholders.

Said plaintiff further alleges that prior to said 25th day of June, A. D. 1898, it had had large experience in the construction and operation of factories for the manufacture of glue and in the supervision and management of the same, and that its officers then possessed knowledge and experience in the construction and management of such factories and in the sale and disposition of their products and of all the raw material which is sold to or used by
40 companies engaged in the manufacture or sale of glue or any of its by-products, and that it possessed large facilities for selling and disposing of the same, all of which was at said time well known to said defendant, its officers, agents, and stockholders.

Said plaintiff further alleges that at some date prior to the 25th day of June, A. D. 1898, the said defendant was organized as a corporation for the purpose of purchasing or otherwise acquiring from the various tanneries located in the city and county of Milwaukee, Wisconsin, all the raw material and glue stock turned out by said tanneries at the market price, to be determined at a fixed time or times during each year, and to convert such glue stock, materials, and by-products of said tanneries into glue at a factory to be located and erected upon some site in the vicinity of the city of Milwaukee, Wisconsin; and this plaintiff alleges upon information and belief that in accordance with said agreement contracts were then or subsequently entered into by and between said United States Glue Company, when organized, and all or nearly all of the companies engaged in the tannery business which were located in or near the city of Milwaukee, Wisconsin, whereby the said defendant should take and pay for all such glue stock and raw material turned out and subject to be disposed of by said tanneries at a fair market price, to be determined at the first of or at some other time during each year, for a period of at least five years from the date of the construction of said factory by said defendant; that the sole or principal object of the organization of said defendant was for the purpose of enabling such companies operating tanneries in the city of Milwaukee to dispose of their glue stock of various kinds to a corporation controlled
41 by themselves and to forestall any unnatural decline in the prices of such glue stock; that all or substantially all the capital stock of said defendant is held and owned by said tanneries or by the stockholders in the companies owning and operating the same.

Said plaintiff further alleges that on or about the 25th day of June,

1898, an agreement was entered into by and between said plaintiff and said defendant wherein and whereby, in consideration of the mutual agreements of the parties, the said defendant agreed to erect, equip, and complete a glue factory on a site to be thereafter selected by it within sixty days from said 25th day of June, 1898, which said factory should be begun and completed by it with the least possible delay after such site should have been selected. Such plaintiff agreed to advise and plan with the architect of said defendant and to oversee and supervise the plans of said factory and secure such economy of space and processes as might be gained from the practical experience which said plaintiff had had in the operation of glue factories; and said plaintiff further agreed to give said defendant the benefit of all of its labor-saving devices and the benefit of its knowledge and experience which it had used or acquired in the manufacture of glue. It was further agreed between the said parties that said plaintiff should have the management of the manufacturing in said factory when completed, and should operate the same for said defendant, and should furnish a superintendent for such factory, whose salary should not exceed $150 per month, and that said plaintiff, by its officers, should give said factory such personal supervision as might be necessary from time to time in the operation of the same, and that said officers should give said defendant in the management and operation of said factory the
42 benefit at all times during the life of said contract of its experience and knowledge and of the experience and knowledge of its officers; that said plaintiff should keep said factory supplied with a capable superintendent at all times during the life of said contract, whose salary should not exceed the amount hereinbefore mentioned; that said plaintiff should control, handle, and sell the entire output, including glue and by-products, of said factory, and all such products should be billed and sold as the product of the defendant, but the invoices should be stamped "Diamond Glue Company, exclusive sale agents." It was further agreed between the parties hereto that, beginning as soon as said factory should be in operation, the said plaintiff should refrain from manufacturing either hide or calf glue at any of its said factories, and should guarantee the payments of all accounts for sales made by or through it. It was further agreed that said plaintiff should receive a commission of ten per cent. of the amount of all sales of glue or by-products, and that thereupon ten per cent. of the cost of the plant should be charged off each year for depreciation, and of the net profits remaining ten per cent. of the amount of the then capital stock should be set aside for its stockholders, and thereupon said plaintiff should receive ten per cent. of the excess of net profits over and above the said ten per cent. dividend so set aside for the stockholders of said defendant. It was further understood and agreed between said parties by said contract that the raw material sold to the said defendant by or for its stockholders should be sold to and purchased by said defendant at the fair market price for the respective grades thereof. It was further understood and agreed that said contract should

cover and extend over a period of five years from the com-
43 pletion and commencement of the operation of the plant so to be located and built by the defendant.

Said plaintiff further alleges that after the execution of said agreement, which was in writing and signed by the parties hereto, the said defendant selected a site for its said glue factory near the city of Milwaukee, in the county of Milwaukee and State of Wisconsin, and thereupon proceeded to erect and equip and complete said glue factory, and said plaintiff did advise and plan with the architect of said defendant and did oversee and supervise the plans of said factory so as to secure such economy of space and processes as it was able to do from its practical experience in the operation of other glue factories, and did from time to time, and as required, give to said defendant the benefit of all its labor-saving devices, as well as of the knowledge and experience it had used or acquired in the manufacture of glue.

Said plaintiff further alleges that the said plant was so located and constructed and was put into operation on or about the 25th day of July, A. D. 1899; that as soon as said factory was in operation said plaintiff did then refrain, and has at all times since refrained, from manufacturing either hide or calf glue at any of its factories, and did thereupon close down its factories before that time used for the manufacture of hide and calf glue and has not operated the same since said date, and on account of said agreement did, at great expense, fit one of them for the manufacture of other kinds of glue and leased *them* to other parties. Said plaintiff has at all times been ready and willing to perform the terms and conditions of said contract, and has in all respects fully complied with the terms and conditions of the same to be performed on its part.

44 Said plaintiff further alleges that upon the completion of said plant said defendant assumed the management of the manufacturing therein and operated the same, and said plaintiff furnished a capable superintendent therefor, whose salary did not exceed one hundred and fifty dollars per month, which was paid by said defendant, and said plaintiff, by its officers, did give to said defendant in its management and operation of said factory at all times during the operation thereof, and until the breach of the contract hereinafter mentioned, the benefit of the experience and knowledge possessed by said plaintiff and by its officers in respect thereto.

Said plaintiff further alleges that upon the commencement of the operation of said factory and the manufacture of glue therein said plaintiff sold all the output thereof which it was able to dispose of, including the glue and the by-products of said factory, until the breach of the contract hereinafter mentioned, and that all such products were billed and sold as the product of said defendant, but the invoices for the same were stamped "Diamond Glue Company, exclusive sale agents," as provided in said contract.

Said plaintiff further alleges that all such sales were made by it in the State of Illinois or elsewhere outside the State of Wisconsin,

and that all products of said factory so sold were shipped by said defendant to the parties so purchasing the same, and that all such shipments, except less than one per cent. thereof, were so made to places outside the State of Wisconsin.

Said plaintiff further alleges that said defendant was unwilling in many cases to accept the prices obtained or offered by plaintiff for sales of lots of glue and by-products manufactured by the defendant, but, on the contrary, asserted the right to reject con-
45 tracts of sale and sales made by the plaintiff in case the officers of defendant did not think the prices obtained by the plaintiff adequate, and in many instances did actually refuse and fail to carry out sales and contracts of sale of glue and by-products made by plaintiff on behalf of defendant, giving as a reason therefor that the price obtained by plaintiff was not satisfactory.

Said plaintiff further alleges that said contract was continuously recognized by said defendant as a binding contract, both by its acting thereunder and by its correspondence with said plaintiff from the time said contract was entered into to the time of the breach hereinafter mentioned.

Said plaintiff further alleges that said defendant, on or about the 20th day of November, 1899, claiming that the plaintiff had agreed in said contract to sell defendant's entire product, and that it had failed to do so, and claiming that for such reason it, the defendant, had a right to treat said contract as ended, threatened so to treat said contract, and for that reason, on or about the 28th day of November, 1899, requested the plaintiff to cease selling its product, and thereafter, on or about the 2nd day of December, 1899, definitely stated to plaintiff that the said contract was at an end and refused to be further bound thereby or to allow the plaintiff to make further sales thereunder.

Said plaintiff alleges that there is now due and owing to it from said defendant the sum of sixteen hundred and ninety-eight and $\frac{48}{100}$ ($1,698.48) dollars for and on account of commissions on sales made by said plaintiff for said defendant under and pursuant to the terms of said contract.

Said plaintiff further alleges that the services furnished by it in planning, overseeing, and supervising the construction of said
46 factory for said defendant and in giving to said defendant the benefit of its labor-saving devices and the knowledge and experience which it had in the manufacture of glue were of great value to said defendant, and which said services have not been paid for by said defendant.

Said plaintiff further alleges that it sustained great loss and damage in closing down its factories for the manufacture of hide and calf glue, in refitting the same as hereinbefore stated, in withdrawing from the glue-stock market as a purchaser of glue stock for said factories, in procuring customers for said defendant and in refraining from manufacturing either hide or calf glue at its factories, no part of which loss and damage has been paid by said defendant.

Said plaintiff further alleges that the output of said factory so

constructed and put into operation by said defendant, including its glue and by-products, would amount to at least three million pounds of glue per year, and that the grease supplied from said factory to be sold by said plaintiff under the contract if carried out would amount to at least one and one-half million pounds per year, and said plaintiff has been and will be deprived of its commissions on sales and of its profits under said contract by reason of the defendant's breach thereof.

That by reason of the premises and of the violation of said contract on the part of said defendant the said plaintiff has sustained damages in the sum of two hundred thousand dollars.

Wherefore said plaintiff demands judgment against said defendant for the sum of two hundred thousand dollars, with interest, besides the costs of this action.

BANCROFT & ADAMS,
MILLER, NOYES, MILLER & WAHL,
Plaintiff's Attorneys.

GEO. H. NOYES, *Of Counsel.*

47 STATE OF ILLINOIS, } *ss:*
County of Cook, }

J. R. Morron, being duly sworn, says that he is the vice-president of the above-named plaintiff, and makes this verification on its behalf; that he has read the foregoing amended complaint and verily believes the same to be true; that the reason why this verification is not made by plaintiff is because it is a corporation, and that none of its principal officers reside in the State of Wisconsin; that the grounds of deponent's belief on the subject are based on the contract referred to in said plaintiff's complaint and on other papers which are in the possession of deponent and from his knowledge of the transactions and from information received by him in his relations to and dealings with the parties as vice-president of said plaintiff.

(Signed) J. R. MORRON.

Subscribed and sworn to before me this 29th day of June, A. D. 1900.

[SEAL.] HARRY L. FEARING,
Notary Public, Cook County, Illinois.

48 And now, at this same term, to wit, January term, 1901, and on the tenth day thereof, to wit, on the 25th day of February, A. D. 1901, the following proceedings were had, to wit:

DIAMOND GLUE COMPANY
vs.
UNITED STATES GLUE COMPANY. } At Law.

This day came the parties, by their counsel, Messrs. Bancroft & Adams and Geo. H. Noyes appearing for the plaintiff, and Messrs. Charles Quarles and Geo. Lines for the defendant, and the issue herein came on to be tried. Whereupon a jury was called to try the

same, who came, to wit, John J. Abel, James Wallace, F. G. Birkel, Joseph P. Sterneman, H. C. Curtis, Adam Ruhl, Charles Lange, Charles Ormand, George Dance, John Mueller, Hugh Boyd, and C. E. Weipting, twelve free, honest, and lawful men of the district, who were severally sworn and empannelled, and, the trial not being concluded, the same was adjourned until tomorrow morning.

FEBRUARY 26, 1901.

This day came the parties, by their counsel, and also the jurors of the jury, and the trial of the issue herein was resumed, and, not being concluded, the same was adjourned until tomorrow morning.

FEBRUARY 27, 1901.

This day came the parties, by their counsel, and also the jurors of the jury, and the trial of the issue herein was resumed; and the jurors of the jury aforesaid, being charged by the court on their said oaths, respectively do say that they find the issue herein in favor of the defendant; and came the plaintiff, by its counsel, and moved the court for a new trial for reasons filed.

49 And afterwards, to wit, on the forty-third day of said term, to wit, on the 22nd day of April, A. D. 1901, the following proceedings were had, to wit:

DIAMOND GLUE COMPANY
vs.
UNITED STATES GLUE COMPANY. } At Law.

The motion of the plaintiff to set aside the verdict herein and grant a new trial for the reasons specified in the written motion herein having come on to be heard—Messrs. Miller, Noyes & Miller appearing on behalf of the plaintiff, and Messrs. Quarles, Spence & Quarles on behalf of the defendant—the court, upon consideration thereof, decides that said plaintiff is not entitled to have said verdict set aside and a new trial herein upon any of the grounds set forth in said motion, and expressly overrules the same, and thereupon denies said plaintiff's motion to set aside the verdict and grant a new trial herein.

Whereupon it is considered and adjudged by this court now here that the said plaintiff take nothing by its suit, and that the defendant do have and recover of the said plaintiff, The Diamond Glue Company, thirty-eight dollars and seventy cents, its costs about its said defense in this behalf by it expended, and that it have execution therefor.

Judgment-roll filed April 22nd, A. D. 1901.

EDWARD KURTZ, *Clerk.*

Costs, $38.70.

May 6, 1901.—Bill of exceptions signed and filed as follows:

50 *Bill of Exceptions.*

United States Circuit Court, Eastern District of Wisconsin.

DIAMOND GLUE COMPANY, Plaintiff,
vs.
UNITED STATES GLUE COMPANY, Defendant.

Be it remembered that heretofore the said plaintiff served and filed its demurrer to that part of the answer of the defendant served herein purporting to allege as a defense that the contract set out in the plaintiff's complaint was void, and that no cause of action arose in favor of said plaintiff against said defendant by reason of the provisions of section 1770*b* of the Revised Statutes of Wisconsin for the Year 1898 for the reason that that portion of the defendant's answer and the facts stated therein were not sufficient to constitute a defense in whole or in part to said action; which said demurrer coming on to be heard, it was contended, among other things, by counsel for the plaintiff, that the statute in question was void and inoperative under section 10 of article 1 of the Constitution of the United States, and also under section 8 of article 1 of the Constitution of the United States, and also under section 2 of article 4 and the fourteenth amendment to the Constitution of the United States; which contention was overruled by said court and an order entered overruling said demurrer; to which plaintiff did then and there duly except; that upon overruling said demurrer an opinion was filed by the Hon. William H. Seaman, judge presiding in said court, as follows:

51 United States Circuit Court, Eastern District of Wisconsin.

DIAMOND GLUE COMPANY
vs.
UNITED STATES GLUE COMPANY. } At Law. May 8, 1900.

Miller, Noyes, Miller & Wahl, for plaintiff; Quarles, Spence & Quarles, for defendant.

On demurrer to matter set up in the answer of defendant as barring the action.

The plaintiff is an Illinois corporation, and the complaint alleges as a cause of action breach of a contract entered into between the parties, which bears date June 25, 1898, providing, in substance, for the erection by the defendant, a Wisconsin corporation, of a glue factory near Milwaukee, Wisconsin, which was to be supervised and operated by the plaintiff for the defendant through the officers and superintendent furnished by the former for the term of five years from the completion of the plant, the plaintiff to have the handling and sale of the entire output, guaranteeing payment of such sales and retaining a percentage on both sales and profits. In consideration of such arrangement the plaintiff, having numerous factories in

various States engaged in manufacturing glue, with numerous branches and connections and extensive experience in manufacture and trade, agreed to supervise the plans for the factory and give to it the benefit of all its labor-saving devices and of its knowledge and experience in the business, and should refrain from "manu-
52 facturing either hide or calf glue at any of its said factories" after the defendant's plant became operative. The complaint alleges the completion of the plant on or about July 25, 1899, with performance on the part of the plaintiff as agreed, and that it thereafter refrained from the manufacture of hide and calf glue, and closed down its factories theretofore engaged in such manufacture, and at great expense fitted one of them for the manufacture of other kinds of glue, and proceeded with the management of the business of the defendant's plant in accordance with said agreement up to December 2, 1899, when said defendant refused to permit further performance, to the damage of the plaintiff $200,000.

The answer states various matters by way of defense, but demurrer is interposed to that portion only which sets up the invalidity of the contract by reason of non-compliance by the plaintiff with the provisions of section 1770*b* of the Revised Statutes of Wisconsin for the Year 1898, which prohibits any foreign corporation from transacting business or acquiring or disposing of property in the State until it shall have filed in the office of the secretary of state "a duly authenticated copy of its charter, articles of association or incorporation," and "all amendments thereto which may be made while it shall continue to do business therein," such filing to have the effect of constituting "the secretary of state its true and lawful attorney upon whom all summons, notices, pleadings or process in any action or proceeding against it may be served in respect to any liability arising out of any business, contract or transaction in this State," to "continue in force irrevocably so long as any liability" remains outstanding in the State. Penalties are prescribed for violations of the statute, and it is further provided that "any contract made by or on behalf" of such corporation "affecting the
53 personal liability thereof or relating to property within the State" before compliance "shall be wholly void on its behalf," but enforceable against it. This provision is contained in the revision of 1898, enacted at a special session in August, 1897, approved August 20, 1897, and made to go into effect September 1, 1898. The answer avers that prior to September 1, 1898, the defendant "had transacted no business with others than its members, except partially planning and making certain contracts for the construction of its said factory and acquiring a site therefor, and that practically all things which were done or attempted to be done by the said plaintiff" under the contract in question were done by it after that date.

SEAMAN, *Judge:*

As stated in Hooper *v.* California, 155 U. S., 648, 652, the principle is well established "that the right of a foreign corporation to engage in business within a State other than that of its creation depends

solely upon the will of such other State," and the exceptions to the rule "embrace only cases where a corporation created by one State vests its right to enter another and to engage in business therein upon the federal nature of its business." A corporation is an artificial being, the mere creature of local law, and has no legal existence beyond the locality of its creation. Recognition of its existence in other States and enforcement of its contracts made therein rest upon comity, and not upon inherent right. Bank of Augusta *v.* Earle, 13 Pet., 519, 588; Paul *v.* Virginia, 8 Wall., 168, 181. Dependent upon assent of the State, express or implied, it is clear that the assent may be granted upon such terms as the legislature may impose (Paul *v.* Virginia, *ante*), and that an enactment
54 within the power of the State which prohibits the transaction of business therein by foreign corporations, except upon compliance with certain conditions, invalidates any contract entered into in violation of the statute, so that the contract cannot be enforced in any court administering the law in such State. Cooper Manufacturing Co. *v.* Ferguson, 113 U. S., 727, 733, and cases cited. Where the prohibition is plain this rule governs equally with or without express terms in the State declaring the invalidity of the contract. Bank of United States *v.* Owens, 2 Pet., 527, 539, and citations in Notes on U. S. Reports, vol. 2, p. 870; Miller *v.* Ammon, 145 U. S., 421, 426; Aetna Life Ins. Co. *v.* Harvey, 11 Wis., 394, 396.

Upon these premises the matter set up in the answer states a good defense unless the statute referred to is inapplicable to the contract of which breach is alleged in the complaint. This contract was entered into after the enactment of the statute, but before its inhibition became operative. It is manifest, therefore, that the contract was not void *ab initio*, as the statute is not retrospective in terms and cannot be made retroactive by construction. The transaction of business by the plaintiff in Wisconsin was not made unlawful until the statute went into effect on September 1, 1898, and in the event of its qualification for a continuance of business by compliance with the statute no question could exist of its right to perform the contract nor of the obligation of the defendant thereunder so far as affected by this statute. But the contract as made was entirely executory, and its performance related to the management and control by the plaintiff of the proposed factory and its products, after completion of the plant and necessarily after the date then fixed for the statute to go into effect.

55 The contention of the plaintiff is in effect that by the making of the contract before September 1, 1898, and entry upon performance with the preliminary advice and supervision of plans on its part the statute became inapplicable to the transaction of business thereunder by the plaintiff during the term of the contract. In other words, that the doctrine of non-interference with contract obligations enabled the plaintiff to thus evade the impending prohibitory statute at will by means of its agreement previously entered into to that end. However the rule may be in reference to preserving rights, if any there be, which accrued through executed

terms of the contract so made, it is clear that the statute cannot be thus set aside by the act of the parties, and that it- provisions took effect on September 1, 1898, and incapacitated the plaintiff to transact business thereafter in the State except on submission to the requirements of the statute. That performance became illegal without such compliance on the part of the plaintiff, and that refusal by the defendant to carry on the transactions in deliberate violation of the statute constituted no actionable breach of the contract. The complaint alleged as the first breach the refusal of the defendant to continue the arrangement on and after December 2, 1899. It rested with the plaintiff to fulfill the simple requirements of the statute and become qualified for performance, and whether its failure in that regard, unless excusable, would constitute a breach on its part need not be determined. It is sufficient that performance became illegal without fault or concurrence on the part of the defendant, and in such view the answer states a good defense. The further contention on behalf of the plaintiff that the statute thus interpreted is obnoxious to the interstate-commerce provision of the Constitution is not deemed tenable. The fact that the products
56 of the factory are largely sold and shipped to other localities does not make the contract in question a transaction of interstate commerce in the constitutional sense.

The demurrer is overruled without passing upon the further question argued on behalf of the defendant as to the nature of the contract. So ordered.

At the time of the interposition of said demurrer of the argument thereon of the said ruling of the court the issues in said cause were joined upon the complaint following and upon the answer of the defendant now in the record and the said demurrer and the reply of the plaintiff now in the record.

(Here follows original complaint, which appears on page 3 of the record.)

Thereupon and after the said order of the court overruling said demurrer said plaintiff, upon leave of court, served the amended complaint now found at page 38 of this record.

Be it remembered that the above-entitled action having come on for trial before a jury upon the amended complaint of the plaintiff, the answer of the defendant and the reply thereto, the following evidence was adduced and the following proceedings had before said court, to wit:

JOHN R. MORRON, sworn as a witness on behalf of the plaintiff testified as follows:

I reside in Chicago and am vice-president of the Diamond Glue Company. I have resided in Chicago about 12 years, and
57 have been vice-president of the Diamond Glue Company since its incorporation, in 1894.

Plaintiff's counsel offer in evidence certified copy of the articles of incorporation of the plaintiff dated Jan. 25, 1894, marked Exhibit 1.

In June, 1898, I had had a large experience in the sale of glue, having had charge of the large sales of Armour & Company's business three or four years prior to the organization of the Diamond Glue Company. I had had considerable experience selling all over the country, all the way from California east in most every State, the products of our own factory and the product of other factories. Prior to 1898 the Diamond Glue Company had a factory at Madison, Indiana, and Chicago, Illinois, and it also handled the product of Schwarschild & Sulsberger, of Kansas City, of which we owned part. It manufactured bone glue, and we also handled the entire output of the Cudahy people. They had plants at Omaha and Sioux City and manufactured bone glue; likewise large purchases of glue we sold outright ourselves. This was all prior to 1898. I should say the Diamond Glue Company sold probably five or six million pounds of glue a year.

We purchased the factory at Madison, Indiana, at the time of our incorporation, 1894, and we bought the Chicago factory some time in 1895. In 1898 there were a great many glue factories besides those mentioned—Armour & Co., Swift & Co., Tamm Bros., California glue works, Peter Cooper, Becker, Adamson & Co., both in New England and Philadelphia, and innumerable smaller factories. At that time the American Glue Co., Boston, and Mulligan, Hegg & Co., New York; Hewett & Bros., of New York, and a good
58 many more handled other glue besides their own; at times I should say that almost all of them, with the exception of Peter Cooper, have been handlers of glue one way or the other—handlers or purchasers.

Glue enters into almost every manufactured article that you can think of; of course, to a greater extent in some than others. Furniture manufacturers are large users of glue, especially those that veneer, where they have to cover a great many surfaces, and paper manufacturers use large quantities of glue, and piano manufacturers, all high-class wood-work manufacturers, and the men that make these shades, these rollers, use glue; used for the sizing of the back of this carpet, and used in manufacturing desks, and in almost everything you can think of.

In 1898 Mr. Spiegel was president and Mr. Freshman secretary and treasurer of the Diamond Glue Co.

I think I first became acquainted with the defendant, United States Glue Co., at the time we made this contract with them. Mr. Vogel was president, Mr. Trostel was an officer, I think, Mr. Anstedt. In 1898 the Diamond Glue Co. received a proposition from the United States Glue Co. with reference to the selling of its proposed product and in relation to the construction of a factory and the sale of its product. The letter is dated June 22d. I think we received it and the accompanying paper the next day, June 23d.

Letter and proposals of June 22d offered in evidence for the purpose of showing the circumstances that led up to the execution of the contract; admitted and marked Exhibit 2.

After receipt of that letter and proposal we considered that propo-

sition that was made to us, and I went up there to meet the directors of the United States Glue Company, because there
59 were some things in the proposition that we could not concede to, and also we had to go up and see what arrangements could be made that would be mutually satisfactory. I wrote out a contract in our office before I went up and presented it to them for discussion, and we agreed upon it there in almost all the particulars. I prepared the contract myself.

I went to Milwaukee the day the contract was signed, June 25th, and met Mr. Fred Vogel, Mr. Trostel, Mr. Becker, and I think Mr. Anstedt was there, too. Nobody accompanied me to Milwaukee. The draft of contract shown me is the one signed on the 25th day of June, 1898, in duplicate, but is not all of the contract. There was an addition made that day which I confirmed in writing next day. (Witness shown paper.) That is the confirmation, made at our office in Chicago, dated June 27th, just a day or two after I returned from Milwaukee.

Papers offered and received in evidence, marked respectively Exhibit 3*a* and 3*b*.

After this contract was made Mr. Freshman, myself, and, I think, our superintendent, Morehead, came up here and met Mr. Vogel and Mr. Trostel; we went and looked at several places which we or they thought might be suitable for them to locate their plant; we went up north to a place where there used to be an old distillery or something of that kind, and didn't think it suited. We met Mr. Vogel that afternoon and went down along the lake where Carrolville is now, and that site was looked up and pronounced satisfactory to us all, and it was practically settled that we should take that site at that time as soon as we could get the property. We received no answer from the United States Glue Company with reference to this Exhibit 3*b*.

60 I should say the site was settled upon the first part of July, 1898, or perhaps the latter part of June. After that Mr. Vogel, for the United States Glue Company, sent down their architect and their master mechanic to Chicago. They met our superintendent and Mr. Freshman. Sketches were made in our office. We gave them our ideas in regard to the glue part of the building of the plant, which were taken by them to Mr. Vogel for his approval; that is all I know. The architect put these sketches, made in our office in Chicago, into the definite plans, and then they began to get bids on the construction of their factory. Mr. Vogel had it in charge. We spoke of Vogel more than the United States Glue Company, because we came more directly in contact with him. I don't think I saw those plans when completed; if I did it was just to glance at them. I didn't know anything about that part of the business. I had nothing to do with the plans or advertising for bids or letting the contract further than furnishing these sketches. The next time I remember seeing Mr. Vogel was in Chicago, in August or September, maybe. They had made a good many changes in the plans and he spoke about them. He told me about lessening

expenses, some things he wanted cut down. I don't know much about what it was, but the bids were pretty high, and he made some changes in the specifications to get them lower, so he told me. The next thing of importance which I remember was that Mr. Vogel wrote down that the work was progressing very slowly. I next saw him, I should say, in about November or December, up at Carrollville, where I went to look at the ground. They had broken ground; that is about all. We sent our superintendent, Mr. Morehead, up there about the time the plans were drawn; he stayed right there during the erecting of their plant and during the operation
61 of it, I should say, up to about the first of September, 1899. He was not in our employ at any time during that period. I sent the letter shown me at the date it bears to Mr. Vogel, with reference to this proposed factory.

Letter dated July 27, 1898, offered and received in evidence, marked Exhibit 4.

I do not remember any reply to this letter.

The factory was completed about the latter part of July, 1899. It was not completed January 1, 1899, as expected; Mr. Vogel had trouble with his contracts, and then it was very bad weather. I wrote this letter dated 10, 27, '98, now shown me, about that time.

Letter received in evidence and marked Exhibit No. 5.

I wrote the letter produced by defendant's counsel at the time it bears date.

Letter offered and received in evidence, marked Exhibit No. 6.

I think the endorsements in blue ink on the letter are in the handwriting of Mr. Vogel, I think: "U. S. Glue Co. Above addressed to Mr. Fred Vogel and answered January 31, 1899."

At the time that letter was written we had been notified of the prices of glue stock; we received this letter from them January 11, 1899.

Letter offered and received in evidence, marked Exhibit No. 7.

The members of the board of the U. S. Glue Company were tanners; the by-products of their tanning business were clippings from the hides and fleshings. Fleshings are fleshy particles attached to certain parts of the animal and left on the skin; they are taken off sometimes by machinery and sometimes by hand, and are not as good for the use of glue as straight hide stock. We received
62 the letter shown me from the United States Glue Co.

Letter dated July 17, 1899, offered and received in evidence, marked Exhibit 8.

I remember Mr. Hanson coming to our office. Our company gave him the information he desired or that we thought would be advantageous to him. He was shown, in regard to our method of keeping track of the cost of glue, what each item cost, what the labor cost, and also in regard to making out the bills that he would make out from the orders we sent him from our office in Chicago. We would send up a slip and he was to make out a bill for the U. S. Glue Co. I wrote this letter dated Feb. 6, 1899, to Mr. Vogel at the time it bears date.

Letter offered and received in evidence, marked Exhibit 9.

I don't remember whether there was any reply to that letter. We received this letter dated April 11, 1899, from the United States Glue Co.

Letter offered and received in evidence, marked Exhibit 10.

We received this letter from the U. S. Glue Co. dated May 6, 1899, at the time of its date.

Letter offered and received in evidence, marked Exhibit 11.

I wrote this letter of July 5, 1899, to the U. S. Glue Co. and received an answer to this last letter.

Letter of July 5, 1899, offered and received in evidence, marked Exhibit 12.

I answered that.

Letter, Vogel to Morron, dated July 7, 1899, offered and received in evidence, marked Exhibit 13.

63 The Darlington referred to in this and prior letters is an employee of Armour & Co., in the hide department. Kimball was Mr. Vogel's representative in Chicago. I received this letter of July 6, 1899, from the U. S. Glue Co. about the time it bears date. The letter dated July 7, 1899, is my answer.

Letter dated July 6, 1899, offered and received in evidence, marked Exhibit 14.

Letter dated July 7, 1899, offered and received in evidence, marked Exhibit 15.

I received this letter from the U. S. Glue Company about the time it bears date, July 12, 1899.

Letter offered and received in evidence, marked Ex. 16.

I received this letter and the enclosures from the U. S. Glue Co. about the time of its date, Aug. 5, 1899.

Letter offered and received in evidence, marked Ex. 17. (The letters are all marked Ex. 17 that are attached to the exhibit.)

I received this letter from the U. S. Glue Co. about the time it bears date, Sept. 2, 1899.

Letter offered and received in evidence, marked Ex. 18.

Mr. Bossert was master mechanic at the U. S. Glue Company's plant. I received this letter from the U. S. Glue Co. about the time of its date, Sept. 18, 1899.

Letter offered in evidence and marked Exhibit 19.

I received this letter from the U. S. Glue Co. about the time of its date, Sept. 21, 1899.

Letter offered and received in evidence, marked Ex. 20.

Mr. Hanson was the young man that went down to Chicago to take charge of their book-keeping and accounting, etc.

64 (Plaintiff's counsel ask for production of letters of Sept. 19th and Sept. 28th. Letter of Sept. 28 produced. Defendant's counsel say they do not find letter of Sept. 19th.)

I wrote this letter dated Sept. 28, 1899, to the U. S. Glue Co.

Letter offered and received in evidence, marked Ex. 21.

The endorsement in blue ink at the corner was not there when the letter was sent. It is in Mr. Vogel's handwriting.

Offered in evidence: "Trostel, please read and return to me; stirred them up."

I received this letter dated Oct. 14, 1899, about the time of its date.

Letter offered and received in evidence, marked Ex. 22.

This letter of Oct. 18, 1899, is my answer sent at the time of its date.

Letter offered and received in evidence, marked Ex. 23.

I sent this letter of Oct. 27, 1899, to Mr. Vogel about the time of its date.

Letter offered and received in evidence, marked Ex. 24.

I do not remember receiving any answer to that letter of Oct. 18th. The facts there stated are true and were true at that time.

I received this letter dated Oct. 28, 1899, in answer to the one just read.

Letter offered and received in evidence, marked Ex. 25.

There has never been at any time any connection between the Diamond Glue Co. and the Diamond Match Company, except that we sold them glue.

I think the letter shown me is a true copy of the letter written and sent to Mr. Vogel October 27th.

65 Letter offered and received in evidence, marked Ex. 24*a*.

I think I can tell whether any of those orders were filled if I see them. This order was not filled. This is the order for the Diamond Match Company—that is, the one you read the letter from, covered by this general description—No. 83 to the Diamond Glue Co., Chicago, 18 barrels, lot 38.

I sent the letter dated in pencil Nov. 3 to the U. S. Glue Co. about that time.

Letter offered in evidence by plaintiff, marked Ex. 26.

Objected to by defendant, first, on the ground that it concerns a proposed compromise, and, second, on the ground that it contains solely statements of facts or alleged facts made in the interest of the writer, the plaintiff.

COURT: The fact it is made in his interest would not make it inadmissible, I take it.

PLAINTIFF'S COUNSEL: Give me the one of November 16th, and we will have them all considered together.

Mr. QUARLES: Statements as to proposed compromise in the first instance, and, second, as to alleged motives on the part of the defendant.

Judge NOYES: It is evidence of the situation at that time, as shown by the correspondence between the parties.

Mr. QUARLES: And that letter was written for the purpose of making evidence.

COURT: I don't think the admissibility of the letter can be determined in that way, where it comes in as one of a series of letters. The rule is well understood that whatever is said by either party is not proof of a fact in any instance.

66 Judge NOYES: Except it be an admission.

COURT: Of course, where it is against the interest of the

party it might be considered as an admission of a fact; but a statement in a letter, an assertion of a fact, cannot prove a fact.

Objection overruled. Defendant excepts.

This letter dated November 16, 1899, is a true copy of a letter sent by me to the U. S. Glue Co. at that date.

Letter offered and received in evidence, marked Ex. 27.

My name was signed to the original. The conversation mentioned as occurring in my letter to Mr. Vogel took place at our office, in Chicago, between Mr. Vogel and myself. Mr. Vogel came in, and we talked about some other matters for a little while. Then he asked me what arrangements we could make to nullify the contract they had with us for the handling of their product. "Well," I said, "that takes me by surprise. We have been bound right up in this thing. I can't give you any answer to that proposition. Now, what do you mean by it?" He says, "That is what I mean. I think it is better to tell just what I mean right straight than it is to beat around the bush." "Well," I said, "I have got to consult with my associates on a matter of that kind. That is just the essence of the Diamond Glue Company. I can't make you any statement allowing you to get out of that contract." "Well," he says, "I don't want you to be too quick about it. Think it over and let me hear from you." That was the latter part of October. So I thought it over. Mr. Vogel asked me if I would write him a proposition of release to them. I said I would talk it over with my associates and write him. The result of that was this letter you have read.

67 Mr. Vogel stated that the reason they were going to break this contract was because they were not satisfied with the amount of glue they had on hand; that was the main thing—manufactured product. In the course of this conversation, although he did not use it as an argument at all, he said, "You remember at the time we made this contract with you we could have placed it in the hands of others to better advantage." I said, "Yes, I knew you could sell that glue at 7½ per cent. instead of 10." That is all that was said.

At that time, November 3, the Diamond Glue Company's factory at Madison, Indiana, had been closed, I think, since May of that year. The company's Chicago factory had been leased to manufacture another kind of glue, bone and mixed glue. There is just the same difference between hide and calf glue and bone and mixed glue as there is difference in their prices—that is, not going into the gelatines at all, a hide and calf glue sells anywhere from 14 or 15 to 12, or sometimes lower than that, and a mixed glue sells 8, 9, 7, and even lower than that. It is a different stock; it is not the same kind of material. There is less difference between mixed glue and bone glue than hide glue and mixed glue. The mixed glue is nearer to the better grade of bone product. The mixed glue is better as a product, take it as a whole, than bone glue. Bone glue is made by putting bones in the kettle and boiling them to a liquor; the liquor is extracted and made into bone glue. Mixed glue is

where they take hide or fleshings and cook them up separately or together; it depends; then the liquors are run together, and then it is dried into what is known as mixed glue. The Diamond Glue Company did not purchase any glue stock for manufacture of hide glue at its Madison factory for the season of 1899. The capacity of the Madison factory was, I should say, about 1,500 pounds of glue a day.

68 I received the letter of the U. S. Glue Co. dated November 15, 1899.

Letter offered and received in evidence, marked Ex. 26*a*.

I also received an answer to my letter of November 16th, dated November 18th.

Letter offered and received in evidence, marked Ex. 28.

The Diamond Glue Co. received this letter from the U. S. Glue Co. dated November 20, 1899.

Letter offered and received in evidence, marked Ex. 29.

We wrote and sent to the U. S. Glue Co. this letter dated Nov. 20, 1899, excluding from the letter the pencil memoranda upon it.

Letter offered and received in evidence, marked Ex. 28*a*.

The 375 barrels mentioned would represent something like 150,000 pounds of glue. The price named, 12½ cents, was a fair market price for that quality of glue at that time.

Referring to our letter of Nov. 20, 1899, to the U. S. Glue Co., Exhibit 28*a*, the pencil memorandum across the top is in the handwriting of Mr. Vogel.

Pencil memorandum offered in evidence in connection with Ex. 28 as follows: "Mr. Hanson, look up those glues and see how much below the average price they are, and telephone and write me. We can then decide if we wish to accept. F. V. J. R."

I wrote this letter of November 22, 1899, and sent it to the U. S. Glue Co. at the time of its date in answer to the letter of the U. S. Glue Co. of November 20, 1899.

Letter offered and received in evidence, marked Ex. 30.

The answer which I received from the U. S. Glue Co. is dated November 25, 1899.

69 Letter offered and received in evidence, marked Ex. 31.

I wrote and sent this letter to the U. S. Glue Co. under date November 24, 1899.

Letter offered and received in evidence, marked Ex. 30*a*.

I wrote the letter of November 27, 1899, shown me to the U. S. Glue Co. about the time of its date.

Letter offered and received in evidence, marked Ex. 32.

I received the answer from the U. S. Glue Co. dated November 28, 1899.

Letter offered and received in evidence, marked Ex. 33.

The copy of letter of December 2, 1899, to the U. S. Glue Co. is a copy from our letter book written to them containing the order. It is not my letter.

Letter referred to offered in evidence by plaintiff. Objected to on the ground there is no proof it was ever sent. Objection sustained. Exception by plaintiff.

The Diamond Glue Co. received this letter dated December 2, 1899, about the time of its date.

Letter offered and received in evidence, marked Ex. 34.

I had a conference with the U. S. Glue Co. about December 1st. I came up here. It was held at one of the rooms of the Pfister hotel. Mr. Vogel, Mr. Trostel, Mr. Zohrlaut, Mr. Anstedt, and Mr. Becker were there, and also Mr. Quarles. These gentlemen were directors of the U. S. Glue Co. and the tanners here in Milwaukee. This was about December 1, 1899. I went upstairs, and Mr. Vogel said that, as he had explained to me before, they were going to or had terminated their agreement with us on this glue business, and they were desirous of settling the matter amicably, and he wanted to know what I wanted to do about it. I told him
70 that my letter of—I think it was November 3d that I wrote—covered the ground about as thoroughly as I could in that matter. He said, "Well, we have got to do something about this thing, and haven't you got any other proposition to make?" I said I had no other proposition to make, and I told him we were doing everything in our power to move that product under the adverse circumstances. He said, "We want you to understand this agreement is at an end." "Well," I said, "you don't mean to say you are going to break this contract?" He said, "Yes; our attorney, Mr. Quarles, will notify you that we break this contract." Mr. Quarles did notify me. I asked him, "You break this contract?" Mr. Quarles says, "Yes; we desire to break this contract; we break it." I don't remember the exact words, but they asked Mr. Quarles to tell that to me. Mr. Vogel didn't answer the question; Mr. Quarles told it to me. I said to Mr. Vogel after they said that—everybody was talking, both to themselves and to me—"Mr. Vogel, I am disappointed in this matter, not only from the great financial loss there is in it, but in you. I want to know whether you break this contract yourself—want to know whether you intend to break it." He said, "Yes." I said, "Why?" He said, "We will pay no man 10 per cent. for selling grease for us." That was not our contract. They then offered me another proposition, and wanted to make another arrangement of some kind with me for handling the output of the factory, but with less commission on the grease. The new proposal was talked over by all of them, I think principally by Mr. Vogel. It was not in the form of a contract; it was not any definite proposition; they were talking it over, and they wanted me to take the glue at the same percentage of commission—10 per cent.—and then cut down the commission on the grease, I think it
71 was to two per cent. instead of 10; it may have been 2½. I told them I would not consider that.

They wanted to know whether I would recognize that they had broken this contract, and I said no. I told them I had not had any legal advice of any kind on this matter; I did not know anything about it. I was looking at it from a business standpoint, living up to the contract, and I didn't know how we stood if they desired to break it. I told them I would have to confer. I was up there all alone; I didn't have anybody to talk to about it. The Diamond

Glue Company afterwards received this letter from the U. S. Glue Co., dated December 4, 1899.

Letter offered in evidence by plaintiff; received and marked Ex. 35. Defendant objects to the introduction of the last paragraph of the letter on the ground it is a statement of a proposition for compromise. Objection sustained. Exception by plaintiff.

I wrote and sent this letter of December 5, 1899, to the U. S. Glue Co. There are some marks there I did not make.

Letter offered in evidence, without pencil marks, marked Ex. 36.

I received this letter from the U. S. Glue Co. about the time of its date (December 7, 1899).

Letter offered and received in evidence, marked Ex. 37.

I received this letter dated December 7, 1899, about the time it bears date.

Letter offered and received in evidence, marked Ex. 38.

I received this letter dated Dec. 18, 1899, from the U. S. Glue Co. about the time it bears date.

Letter offered and received in evidence, marked Ex. 39.

Q. What, if any portion of the accumulated glue stock in the hands of the U. S. Glue Co. did the Diamond Glue Co. buy
72 prior to the opening of the U. S. Glue Co. factory?

A. The Diamond Glue Co. took, I think, their fleshings for one month. If I am not mistaken, it was for the month of March, 1899.

Q. What were the circumstances of that purchase? How did the Diamond Glue Co. take it?

A. They kept telling us right along that the factory would be finished. First it was to be finished the first of January, 1899, and when we got there it was to be done the first of March, etc., and when we got to the first of March it was still put off, and they became congested—I mean they wanted to get rid of that glue stock; they kept shipping it down to Carrolville, where the plant was put up. The tanners interested in the U. S. Glue Co. shipped it down, and then they wanted to sell that glue stock every time, and it was a hard thing to sell glue stock at that time, especially at the prices they wanted for it, and we took the glue stock for one month—that is, the fleshings, the most perishable of all their stock, for one month at Chicago to help them out. When we found out that the factory was being delayed we wanted to sell that glue stock and recommended them to sell it. In 1899 the head office of the Diamond Glue Co. was in Chicago. It had a branch office and warehouse in Boston and Philadelphia, an agency in Toronto, Canada, and it had an office in New York city. Those agencies had been there, I should say, three or four years prior to 1899, all except New York. New York was there probably two years before that.

From the general office we had four salesmen—that is, from the Chicago office. From Boston we had a manager who did active work and handled what we considered to be the most important territory. He had traveling salesmen under him—sometimes two
73 and sometimes one. In Philadelphia we had a manager, and he also had a traveling man under him and a young man in

the office, so that both of them could go out and do work and bring results. There was a traveling salesman in Canada that covered all the territory between Toronto and Montreal.

We had no offices at all in the State of Wisconsin at any time after June 1, 1898. The Diamond Glue Company had no property at all in the State of Wisconsin.

Q. What were the methods employed by the Diamond Glue Company, aside from the use of traveling salesmen and these offices, in bringing the glue to the attention of purchasers?

A. By correspondence.

Q. Was any advertising done; and, if so, what?

A. No advertising done except through correspondence and putting of the glue out thoroughly by our representatives and correspondence and circular letters.

This glue is sold by sample. Every boiling of glue is different; no two are alike just because they are made from the same kind of stock, and then glue is used in so many different ways and is made scientifically. I can give you an illustration; in oak wood there is an acid, and we have to make the glue for that so that there will be an alkali in the glue; that alkali when it touches the acid in the oak will neutralize that acid; one will take care of the other, so you can get the best results; it will be adapted to some particlar purpose.

The salesman takes with him samples of glue to show what he has to sell. The quality is determined by test. There are two or three tests for different kinds of glue. Take a carpenter, or sash, door, and blind men, or any man on a farm in any place that wanted to glue anything together, he would naturally use soft wood—
74 pine—and we test this glue for viscosity. The solution would be about the same as molasses or syrup. The reason we give him a thick glue is that pine wood is porous; we would have to give him a bone glue like molasses so it would not soak into the wood. The salesman carries with him samples adapted to the various requirements of each business. The purchaser can tell what the glue is only by practical use of it.

Q. What steps did the Diamond Glue Co. take to put the product of the U. S. Glue Co. on the market after the factory began operations in July, 1899?

A. It sent its samples to every one of its salesmen, giving them prices.

We were supposed to fix the prices, but we did not. The U. S. Glue Co. fixed them. We did everything we could to put the glue on the market. We only had that glue for three months. We sold it and sent it around in sample barrels principally. Each one of those sample barrels was itself a salesman, because during the month of July and August most all the consumers of glue were contracting. They made a contract, a good many of them, at the beginning of January, the beginning of the calendar year. We gave this to our salesmen, and we knew a great many places the salesmen were going to place this glue was going to be where they could not get any immediate returns, because they were under contract with

other glue. We wanted to get a barrel of glue in and have them try it alongside of what they were using. They did that. Those were my instructions, so that when their contract expired that by the merit and quality of that glue, linked with our salesmanship, we could get those orders. We placed a good many orders by sample—
one barrel, two barrels, three and four—still they didn't
75 amount to a great deal in dollars and cents, they would all have brought in results.

Motion by defendant to strike out "they would all have brought results." Motion granted. Exception by plaintiff.

COURT: He may describe what was done, and if he is asked for expert testimony that is another thing.

My experience as a salesman in the handling of the product of different glue factories has taught me that in placing those sample barrels as we did for the U. S. Glue Co. that a greater majority of them would have resulted in securing to us our proportion of the contracts for which they were sent out as missionaries. We could not get the product of a new factory on the market thoroughly and intelligently in less than a year or a year and a half's time.

The estimated capacity of the U. S. Glue Co. factory when we were supervising the plans was for 30 to 32 million pounds of glue stock—to work that amount up. I figured that amount of glue stock would produce about 12 to 13 per cent. of glue; anywheres in the neighborhood of four million pounds of manufactured glue from that raw material. There is a great deal of difference between the operation of a glue factory in summer and at other times of the year. We have to put the jelly—after the liquor is cooked up from these hide pieces and fleshings it is in the form of liquor, and that liquor is put into troughs and then taken out and cooled. In winter it will cool in the ordinary atmosphere. In summer we have to put it in the ice-house. All that is extra labor and cost if it is a refrigerating machine, or cost of ice if it is an ice plant. It is a good deal harder to dry glue in the summer on account of the humidity. The glue is liable to fall through the nets. The best season to make glue is in the winter months.

76 I was acquainted with the market value of glue of the grades that were manufactured by the U. S. Glue Co. in 1899. The price glue would sell for depends upon the test of the glue and its comparative value. I should say that at that time a very fair price, amply high, would be 12⅞ to 13 cents a pound on the glue, taking the entire product. It would be impossible for me to tell about the grades; it would range above and below.

Samples were sent us of each boil of glue made by the United States Glue Company about twice a week. The conditions at that time of the year were very unfavorable for the selling of large quantities of glue. That was in July and August. September, October, and November are just the same. A good many people contract for glue beginning the first of January to the end of December following, and they take in their samples some time before, sometimes as far back as August, and sometimes they don't take them in until

December. I do not mean to say all the contracts are let that way. There is another thing about glue: If you offer anybody a large quantity of glue—take a carpenter or anybody that has got two barrels of glue and he uses two barrels a year, now there is no use going to that man and offering to cut that price a cent or two a pound in order to sell him five more barrels of glue, because he won't take it anyway and you make him dissatisfied with the price paid for the two and offer him something he can't use in two or three years. At that time in order to move large quantities of glue it would have to be sold at a reduced price.

The sales were made by our traveling salesmen all over the country. Those orders were sent to the Chicago office and there passed upon. I acknowledge every order that comes into the office
77 and no glue is shipped that does not come in there; every order is sent right in to me in the Chicago office, and I acknowledge every order; our salesmen would send in an order to our general office in Chicago, we will say to John Jones & Co., of Menasha, for one barrel of glue. We have a regular printed slip there which would be filled out on the typewriter where it says shipped to John Jones & Co., destination Menasha, put down one barrel, lot number, making the selection from our office and leaving the blank space open; above put the weight of the barrel, gross weight and tare, and then we would put in the price per pound. Then that went up to the U. S. Glue Co. They got that order and they filled in these weights I speak about, and then they made out the bill and sent it to the customer. They would send Jones & Company that bill and send us a copy so we could keep track of commissions they owed us. We were also responsible for the credits. We had to guarantee the account; therefore no order could be shipped until we had passed upon it in Chicago to say whether the credit was good. The price per pound was put in by us in Chicago with the lot number. If the price were not satisfactory to the U. S. Glue Co. the order would be sent back and would not be filled. There were cases of that kind. We had one yesterday that you showed me. There were others.

This bunch of papers now handed me are the shipping slips that we filled in, with the barrel number, the shipment, and price on it, which was sent up to Milwaukee.

When the glue stock is boiled, grease comes to the top. That is skimmed off and put into tanks, and after the liquor is drawn off the glue from these cooking vats there remains in the bottom of the vats a lot of stuff that looks like sediment; in other words,
78 we have taken all the glutin, and a mass of stuff remains in the bottom of the kettle which looks like white sawdust. We put that into gunny-sack material and put it in the hydraulic press and get the grease out of it. We put the grease that comes from that into the grease skimmed off, and in that way utilize everything in the animal. We sold about $14,000 worth of the grease in the 69 days, I think, that they operated the factory.

These bills contain the sales of grease as well as of glue. I think we sold all the grease produced during that time. I don't think

they kept any of it. I had no trouble in selling it. I think it sold from about 3½ to 3¼ cents. I have a list of all the sales of both grease and glue prepared from our books and the original papers there, and know it is correct. It shows the date of sales, the people to whom the glue and grease was sold, the price per pound at which it was sold, the number of the order and the date of the shipment, I think, of each one. This is one of the sheets from the book shown me of reports of sales. They are all on the same blank, made out substantially in the same way. It is a bill of shipment to William Ritter & Brothers, of Philadelphia, of a sale to him on Dec. 1, 1899. The shipment was made the 5th. The typewritten parts of the slip were made out by the Diamond Glue Co., in Chicago. The other portions in writing and the stamp were put on in Milwaukee or Carrolville by the U. S. Glue Co.

Paper offered in evidence, marked Ex. 40.
List of sales offered in evidence and marked Ex. 41.

I think there is nothing on this list which is not on this book of original orders. Everything can be checked from one to the other of these two.

79 After the U. S. Glue Co. notified the Diamond Glue Co. that it could no longer sell the product of the U. S. Glue Co. not a representative or agent or employee of the Diamond Glue Co. was withdrawn from the State of Wisconsin. No property of the Diamond Glue Co. was withdrawn from the State of Wisconsin.

Less than one per cent. of the total amount of sales made by the Diamond Glue Co. were made to purchasers in the State of Wisconsin. I should say that the average amount of glue that factory as constructed could produce would be about three million pounds per annum. The average price—that would take into consideration the probabilities of fluctuation—judged by my experience, would be 12½ to 12¾ cents. From my experience, I think it could be sold at 12½ cents if we were given a fair trial, one year with another, for four or five years. Judging in the same way, I should say the grease could be sold from 2¾ to 4¼ cents. The amount of grease the factory could produce would be two million and a half to three million pounds a year. That is estimated. I can't do any better than that. The price would be, say, 2¾ to 4¼. I have given a good leeway there. In my judgment, the Diamond Glue Co. could have sold the entire glue and grease product of that factory during the five years' life of that contract. I should say it would have cost the Diamond Glue Co., with our business as it was in 1899, about 4 % out of the 10 % commission to do that business. I arrive at that by figuring what our expenses would be in selling that. That four per cent. would not cover our cost of selling what glue we sold in the fall of 1899, because we had only a small run, 60 or 90 days. That was pioneer work. The volume of business we do is what decreases the selling cost per pound. That is where we are losers.

80 There is practically no difference in cost to us in selling an order of 1 barrel or a car-load. It is sometimes harder to get a barrel introduced than it is to sell a car-load afterwards.

The U. S. Glue Co. were supposed to send regular printed sheets of the boilings and manufacturing work down to us at the end of every month or every week. The papers handed me are the accounts received from the U. S. Glue Co. by the Diamond Glue Co. of the manufacturing. They tell the kind of material that has been worked up, how much glue was used, how much labor, how much the sundries are, and what the yield of the glue stock is—that is, the number of pounds of glue stock. We would keep track to see how much the stock was yielding. The sheets show that they were sent weekly. That date says up here, "manufacturing account for the week ending blank." I think these are all that the Diamond Glue Co. received from the U. S. Glue Co. The first one is for the week ending July 29, 1899, and the last one for the week ending November 4, 1899.

Received in evidence and marked Ex. 42 (fifteen sheets).

The Diamond Glue Co. had no other record or knowledge of the work of that factory that I know of. It had no control during this period between July and November over the prices paid for the labor of that factory, over the character, quantity, or prices of material or coal used, or over the nature and amount of the sundries charged. Looking at the sheets, the item under coal, labor, sundries, and material is dollars. The item "run" means how it is divided. For instance, when they cook up a lot of glue stock they take off what they call glue runs—that is, the top of it—and make that into a better glue. Then the next thing taken off, third or fourth, that will be another grade; and then take off the
81 fourth or fifth; that is the last one; that is separate. Those are called runs. The next column, cooler, means that when the glue material is cooked up it forms into a liquid and is run into coolers, and those I spoke of as having been put in the ice-house. The yield means number of pounds of glue that can be gotten from a certain number of pounds of glue stock. The final column, total cost, is coal plus labor, plus sundries and those things they put in there. I think the item at the bottom, cost per pound, is arrived at by those figures up here, dividing the total cost of yield by the number of pounds of glue made. I think there is not in these statements any credit or deduction for grease.

The item manufacturing cost means cost of producing the glue without any cost of raw material. To arrive at the amount in these reports they struck out the cost of raw material and took all these others, which are, a good many of them, arbitrary charges.

In the manufacturing account for the week ending September 16th there is no record of any glue being made, but the charges are here. The total items charged under that week are $286.75 for coal, $804.26 for labor, and $600 under the head of sundries. The items under sundries are entered $100 per day. For the week ending September 9th there are the same charges and no boilings. When I say the same charges it may not be exactly the same in dollars and cents. The $100 a day is just the same and labor and coal are about the same. There is another week ending September 2d, no

glue at all. But I see sundries increased to $719. Mr. Vogel stated those charges of $100 a day were interest; upon what I do not know. That was charged for each day during this entire period covered by these manufacturing sheets.

82 Manufacturing sheets, fifteen in number, running from week ending July 29th to week ending November 4th, offered in evidence, marked Exhibit 42.

The sales shown in the reports are all the sales made by the Diamond Glue Co. under the contract, and the commissions claimed are on a portion of those sales. I do not remember that the Diamond Glue Co. was called upon to pay any of those accounts by the U. S. Glue Co. under its guaranty.

Mr. Morehead was the first superintendent whom the Diamond Glue Co. sent to the U. S. Glue Co. I had known him ever since our incorporation. He had been superintendent of our plant at Madison and had been general superintendent at our other plant. We considered his competency for such work splendid. I think he remained superintendent of the U. S. Glue Co. at Carrolville or Milwaukee until some time the latter part of August, 1899. We furnished another superintendent by the name of Harden, who, I think, was a competent man. I guess he is there now. Mr. Morehead is employed by the Diamond Glue Co. as general superintendent.

Cross-examination:

The interview at Hotel Pfister on December 1, 1899, took over an hour. I think I came up on the 11 o'clock train that gets here about 2; it took from two to nearly 4; I think I went right down to the train after the meeting. There was quite a little conversation with me. I have not testified in detail all that took place there. I remember it was said on the side of the U. S. Glue Co. that the Diamond Glue Co. had failed to sell the output of the glue. They had said it before and said it then. I do not remember that I was informed there that unless that glue was sold the plant would
83 have to cease manufacturing. I remember that statement being made before and my thinking it was a queer one and laughing at it, but I don't remember it being made then. I didn't think it was a laughing matter they were running behind every day, but it followed out an argument that Mr. Vogel wrote me, trying to prove to me the best thing I could do was to allow him to break the contract because he would shut down. I thought it was a kind of a joke. I didn't think he was that kind of a man. I didn't take it seriously. I don't remember that it was said to me seriously at that interview that it would mean bankruptcy for that company to continue business under those conditions. That was not what I laughed at. I laughed at Mr. Vogel saying that he was going to break his word. I do not remember any discussion as to the cost of manufacture, because they would not take that up with me except in a general way. I remember making the point that he deducted the product of grease from the cost, but that question was only taken up

in a general way with me. I don't remember of having any figures deducted from any other figures at that meeting.

I remember they wanted me to state exactly when I could move that product of glue, and I told them it was an impossibility for any person, speaking honestly and intelligently, to state that. I said it would be impossible for anybody to give a definite date at which that glue could be sold, speaking honestly and intelligently. I have sworn here that it could have been sold by our company if we were given a fair chance and reasonable time; that it could have been sold within five years. These gentlemen did not ask that question of me; they asked me in regard to the stuff they had on hand.

84 Q. Don't you remember that you were asked there if you would make a new contract by which you would guarantee, or agree rather, to sell the output or some specific percentage of it?

A. Yes, sir; I remember I was asked that question; but not to apply on five years' contract.

As I remember my answer, it was that no specified amount of glue would be guaranteed by any reputable house to be sold on any time. I could have put a limit on it if we had been given a chance. I told you at the close of the interview I would like to have you send down, in writing, your various propositions. What I told you was, I would not guarantee to sell a specific amount of glue in a specific length of time, referring particularly to the excess of stuff you had on hand. You wanted to know how long before you could get it into money; that was the thing. It was not as a production.

Q. Was it not represented to you there that over 80 per cent. of the glue product of this factory was being piled up in the warehouse and held; and was not the question that was discussed with you as to whether you could relieve that pressure, not only for the excess then on hand, but for the future?

A. Yes, sir; that was talked over.

Q. What was your answer to that question?

A. Although I did not know anything about those percentages you gave nor did I come up with any figures just to talk it over, my answer to it was, We were trying to place your output for you intelligently. We had sent out those sample barrels; that in themselves would have brought back results, but we had had that glue practically only from the first of August until the latter part

85 of October, in a very dull time for the sale of glue and putting it out to advantage, and I thought in a great measure that accounted for the figures you gave us as to the amount of glue you held on hand down there and the amount we had disposed of. I told you particularly I thought the small percentage of glue you mentioned of us having sold was pioneers, and they themselves would work for you and would work for us.

We gave you no answer as to definite amount of glue we could sell at a specified time. We were unable to tell you what would be done. I remember I was pressed to say how much of that product the Diamond Glue Co. could put out. I do not remember finally

saying the only figures I could give would be that we could eventually move 60 per cent. I do not remember any such statement. I do not remember that at that meeting one of the objects they sought to reach was to get some assurance from me as to our ability to move this output. I would not swear those questions were not asked me.

Q. Don't you know they were asked you?

A. Incidentally; yes, sir.

Those questions did not get any definite answer from me. I think, I am sure of that. I think I stated that if we were given the time the product could be handled satisfactorily, because I always thought that, and if the question had been asked me at all that would have been my answer. I do not remember making any statement to the effect that this ten per cent. provided for in the contract to be taken off from sales in the first instance only covered the expense we incurred in making the sales. It was not that way. I think the question as to the character of a considerable amount of the glue product made at this factory was spoken of. I don't know as I said a
86 considerable part of it was off color and consequently not readily marketable; I know there was some.

I think I remember saying the Diamond Glue Co. sold five or six million pounds of glue a year; that is estimated. I think we sold that amount the year ending June, 1898, and about the same for the year ending in June, 1899. I cannot answer as to the number of pounds for the year ending June, 1900. At Madison, Indiana, we manufactured from cowhides and calf hides. We ceased manufacturing when this plant went into operation. We did formerly sometimes operate the Madison factory during the hot months. I think I said we were making about 1,500 pounds of hide and calf glue there. I cannot recollect how many days we operated the factory the year we closed down. I will try to ascertain.

We manufactured hide and calf glue at our Chicago factory. In a year ending the time named I think we would make a million and a half pounds. The Chicago factory was leased to the Northwestern Fertilizer Company.

From the first of January, 1899, to the first of January, 1900, I think we sold five or six million pounds of glue. We don't end our year just that way. At the same time, if we figure it up that would be just about right. We manufactured that year at Kansas City bone glue; that is all we manufactured ourselves. We had the outputs of the plant at Omaha and Sioux City. I should say about one-half we sold was hide and calf glue—that is, it would be from about a million six hundred thousand up to two million; that is pretty high, but I just approximate it. I think probably a million and a half would be about right. I should think our sales were perhaps a little larger in 1898. I could not tell how much larger without looking it up; 1897 and 1898 would run along about
87 the same, except that our business would naturally increase.

We got some of the hide and calf glue sold in 1899 from the U. S. Glue Co. I think these reports show the amount in pounds; the dollars and cents I am not sure of.

I think we sold about five hundred thousand for the U. S. Glue Co. I could not tell as to the memoranda of 139,000 pounds by glancing at it. I should have to add this all up in order to do that.

We got the rest of the hide and calf glue handled by us from Gonsling & Fisher factory, Gowanda. It was less than was sold for the U. S. Glue Co. I think the Gowanda factory went into operation in the early part of 1899. Our relations to that factory were practically the same under practically the same contract as with the U. S. Glue Co. That contract was made in 1898. The estimated capacity of the Gowanda factory is a million and a half or two million pounds. We had a contract with Robert H. Foerderer that we delivered some goat glue on. That is somewhat similar to this hide and calf glue.

The capacity of the Chicago and Madison factories would be about 1,800,000. We got about the same amount of glue from Federer in 1899 as in 1898. We did not sell all the output of our concern in 1898. It is impossible to sell the output at any specific time. I could not tell you how much we had on hand in May, 1898.

I am general manager of the company and attend more particularly to the sale of the glues. I took no practical part in the building and equipment of the Milwaukee factory. I was here or at Carrolville once during construction, about the time it was finished. Mr. Freshman consulted with the U. S. Glue Co. in regard to the construction. Mr. Morehead was the man we furnished the
88 U. S. Glue Co. I am not familiar with the details of that factory and its construction. I am familiar somewhat with the reports that were made as to the causes of the delay in the construction. These reports were made by Mr. Vogel. With the technique of the building of the factory I am not familiar.

Q. Do you know how many vats were originally planned for the building?

Objected to as not proper cross-examination. Objection overruled. Exception by plaintiff.

A. Not the exact number.

I had no personal part in the matter of the purchase and disposal of the fleshings prior to the last of July, 1899, when this glue factory went into operation. I knew the Diamond Glue Company took the fleshings thro' the month of March, 1899. That arrangement was not made by me. We were not manufacturing at that time. We sold that glue stock to J. Spiegel & Co., dealers in raw material and handlers of grease. J. Spiegel is president of the Diamond Glue Co. The Diamond Glue Co. really emanated from that old concern. They went out of the business, as the Diamond Glue Company, composed of Spiegel, Freshman, and myself, went in. Mr. Spiegel is president, I am vice-president, and Freshman is secretary and treasurer of the Diamond Glue Co. The Spiegel Company sold the glue stock to a number of parties. They are in the raw material business, and that glue stock is some of it dried—all that is bought in that way.

Q. Did you sell some of that to the N. W. Fertilizer Company—the Diamond Glue Co. under another name?

Objected to. Objection overruled. Exception by plaintiff.

89 A. Why, I think probably some of that stock was sold to the N. W. Fertilizer Company.

I do not remember what prices we got. I advised the U. S. Glue Co. to sell its glue stock. I gave that advice to Mr. Vogel and to Mr. Zohrlaut. I can't give the exact date, but after we found out they were not building their factory in time they tried to sell their glue stock right along. They made offers of it and nobody wanted it. They offered it to Armour & Company. Mr. Zohrlaut said so in Chicago. I can't give you the date. Mr. Vogel has covered it by correspondence. There is a letter pertaining to it. I think the U. S. Glue Co. commenced accumulating glue stock from the first of January, 1899. I advised them to sell that glue stock when they said they were going to complete their factory by March 1st. Mr. Vogel said that. Then we didn't advise selling the accumulation of, say, a couple of months, but after that we advised them to sell, and they wanted to sell; we had no control over it.

(Plaintiff's counsel hands Exhibit 7 to defendant's counsel.)

This is the letter I refer to as fixing the time of Mr. Zohrlaut's attempt. That is January 11, 1899. I advised them to sell their fleshings or glue stock at that time. The letter speaks something about purchasing new stock from some one by the name of Woelfel. It reads as follows: "Your letter received from Mr. Woelfel, of Morris, Illinois, and would like to hear from you whether you know his stock—what price you want to make for his next year's production." I do not know personally of the U. S. Glue Co. buying some glue stock from Gallun in May, 1899. I know they wanted in some way or other to get Gallun into this combination. I am not fully posted whether they bought then or not.

90 On these weekly statements, there are offered here as statements of expense of manufacture simply four elements, coal, labor, sundries, and material. In regard to sundries, $100 a day I understand to be charged for some kind of interest; we have never been able to find out on what. That was the particular arbitrary charge. I can't analyze these sundries to you here now. If we had your book showing what the sundries meant, we could tell you. Insurance on the plant and stock would be a part of expense. Whether repairs would be an expense item would depend upon the kind. If you were going to put in a lot of repairs for the benefit of years to come, you could not charge them under the head of sundries. The barrels for the glue ought to be in labor, and I think you will find it there. They coopered the barrels after they got there. Buying the barrels would come under the head of actual expenses; possibly come under sundries. There is no particular item for it. They never gave us any intelligent idea of that.

Mr. Vogel first told us you would have fifty million pounds of glue stock a year to be worked up. That was the original estimate.

They overestimated the supply the tanners had, and always they expected to get others into this company. The capacity of the plant as they would ultimately want it was 30 million pounds glue stock. I should say that meant about four million pounds of glue. The glue stock would carry out 15 to 30 % glutin. That is my estimate of it.

Redirect examination:

I was not asked to bring my attorney at that interview of December 1, 1899, to meet Mr. Quarles. I was not notified that these five or six gentlemen representing the U. S. Glue Co. were to
91 have their attorney there to question me. Mr. Quarles participated in that conference quite extensively. I found these gentlemen all downstairs in the Pfister hotel waiting for me. I got here on the train about 2, and caught the 4 home. I don't know whether they had a stenographer anywhere behind any screen in the room. I don't remember any screen, and I didn't examine the closets. I said this in that conversation regarding the 10 per cent. commission. I said on this pioneer work, the starting out and putting out these sample barrels to the trade, that it would cost fully 10 per cent. The benefits we expected to reap would be cut off from it. That statement was true. I was asked as to the amount of hide and calf glue we sold during the year 1899, and I mentioned the products of the Foederer factory, the Fisher factory, and the U. S. Glue Co. I was giving in those figures a statement for the entire year. We handled the U. S. Glue Co. practically about 60 days. I have a memorandum of the respective amounts for Fisher and Foederer during the period between July 26th and December 11th, 1899, and the average price. I would like to say that these are comparative statements between July 26 and December 11, but you know we didn't get into the harness to handle the U. S. Glue Company glue until along in September. The first sales was 1st of September. I have the total amount of sales for these three companies between the two dates mentioned. We sold for the Fisher contract, which is the one at Gowanda, 118,000 pounds of glue, amounting to $15,608. We sold for Foederer, the factory in Philadelphia, during the same length of time 80,926 pounds, amounting to $9,908.42. For the U. S. Glue Co. we sold 139,134 pounds, of a total of
$18,167.90. The average price for the Fisher glue, which
92 contained considerable gelatine, was 13.22 cents a pound; for the Foederer glue, 12.24 cents, and for the U. S. Glue Co., 13.06 cents.

At the time I had this conversation with Mr. Zohrlaut and advised him to sell the stock he told me the prices that Darlington (Armour & Co.) offered him. They were ridiculous prices. I think it was 2 cents for calf and a dollar seventy-five for hide trimmings, and seventy-five for fleshings. I don't remember exactly. I think my prices were stated right. I had some talk with Mr. Zohrlaut relating to the portion of Mr. Vogel's letter of January 11th, in which he says he is rather put out at Darlington's prices. They were put out because when he got there Darlington didn't offer him

anything for his stock. Darlington was trying to stick the glue factory up here and discourage the tanners.

They just said they could not consider the offer that Darlington made after Mr. Zohrlaut went to Chicago. They didn't even repeat the price to us, except to say they were very much disappointed. They meant materially lower prices than this, and Mr. Vogel says he is put out because Darlington didn't keep up to the bluff he made.

At the time of the conference of December 1st nothing was said by Mr. Vogel or any of the other directors present as to what investigation of the Diamond Glue Co. they had made or why they made this contract with it. I did not at any time prior to the making of this contract state to the U. S. Glue Co. or any of its officers the amount of the average sales of the Diamond Glue Co. I don't remember that the question was ever asked me.

(Witness shown paper.) This is a true copy of a letter I wrote and sent Mr. Vogel about March 30, 1899, the time it bears date.

Copy of letter offered in evidence, marked Ex. 43.

93 Recross-examination:

I cannot give you an idea of how much more we sold during 1899 for the Gowanda people than this 115,000 pounds. It is a comparative statement only of the same length of time we were handling your production. I cannot tell now how much we sold for them altogether in 1899. I can ascertain from Chicago. I think we began to sell for them some time during the early part of 1899.

Arnold Freshman, sworn as a witness on behalf of the plaintiff, testified as follows:

I reside in Chicago; have been engaged in the manufacture of glue for myself about 14 years. In 1875 and until 1876 I worked in my father's glue factory. In 1876 I went into business for myself in the city of Cincinnati. At that time I speculated in dealing in manufactured glue, and dealt in raw material for manufacturers of glue. I then had no factory. I continued in that business, I think, about 13 years. About 14 years ago we went into the business of manufacturing glue in Cincinnati. I think the factory turned out from 800 to 1,000 pounds a day, mostly of hide glues. This factory was located in Madison, Indiana. We had an office and stores in Cincinnati. I became connected with the Diamond Glue Company at the time they incorporated, January 25th, 1894. Since that time I have been secretary and treasurer of that company. I have charge of the factories, and also head of the department of the office. I am not what you would call a practical glue manufacturer. I know all about glue. I never boiled any glue, but I know what good glue is and what bad glue is—know the difference—and how glue ought to be made. In 1898 there were known to
94 the trade bone and hide glues and gelatines. Bone glues are made out of bone liquors. Hide glues are made from

hide, calf, and fleshings. Calf stock will make stronger glue than hide stock. It being young, it don't take so long to boil. It will make a better quality of glue than hide trimming. Gelatine is classed as glue in a way. It is generally made out of the first run of either hide or calf.

The first I had to do with the construction of this plant of the U. S. Glue Co. was when Finkler, Bossert, Morehead, and myself went out to the Diamond glue factory at Chicago and looked over things to get a general idea of the factory. We went back to the office and made some drawings. I think Mr. Morehead had some drawings ready; I saw them. Mr. Vogel figured in our office he expected to have 30 to 32 million pounds of stock, and he wanted to work that stock up, and that is the size of factory he wanted—to work up about that quantity of stock in one year's time. He told us he expected to get that glue stock from the Milwaukee tanners, and he expected some of the Milwaukee tanners, and also Captain Booch, N. R. Elens and Son, to join the U. S. Glue Company. These people were producers of glue stock. The sketch referred to was prepared for a plant of the capacity named by Mr. Vogel. The plans were sent up by Mr. Morehead to Milwaukee, and Mr. Finkler, the architect, made some drawings, and about the time they were finished I went up there and looked things over and talked things over with Mr. Morehead. Mr. Morehead was then employed by the U. S. Glue Company in Milwaukee. I think these plans were turned over to the architect in August, 1898.

I think I came up a little later when the bids were opened. It was in Mr. Trostel's factory, and the gentleman had gone
95 over the figures what the tannery would cost. This was in the afternoon. Mr. Vogel, Mr. Trostel, Mr. Finkler, Mr. Bossert were present. I am not sure whether Mr. Anstedt was there or not. I don't exactly remember the date, but it was about three weeks later than the first visit. I know the plans were all finished and bids in, and they wanted to talk over the bids. I think some minor changes were made in the plans between the time the sketches were made and the bids opened. I think they were made by Mr. Morehead. They were not exactly by my direction, but we talked things over, and Mr. Morehead probably made some little changes, but they were of minor character. I think the only suggestion I made was that we ought to have more windows in the boiling-room. The contracts were not let while I was in Milwaukee, and I had nothing to do with them. I think I went up to Milwaukee again about the time they broke ground some time in December and looked over the situation. I don't remember whether I saw Mr. Vogel. I don't think I went up again until the buildings were going up.

Bossert and Morehead in a general way talked about delays and on account of the weather was the main thing, and then on account he could not get the lumber, could not get the bricks; there was delay all round, especially the delay, I think, was on the bricks and lumber; they could not make any progress. They expected when I talked with Mr. Vogel in Chicago to have the plant up by Janu-

ary 1, 1899. I went to Carrolville several times during the time the buildings were going up and just stayed an hour or two. I didn't do anything in regard to the architect's part; I simply talked over matters how things were progressing with Mr. Morehead. The most part I was interested in was to have the factory go up as quick as possible and trying to hurry the thing along. In Chicago
96 at the time the drawings were made we talked over in a general way how it would be best to construct a factory. Mr. Bossert had charge of the machinery part of the factory. He was master mechanic of the Pfister & Vogel Co., then acting for the U. S. Glue Co. I did not read the contracts or have anything to do with the contractors while at work. The factory was completed, I think, the latter part of July, 1899.

The Diamond Glue Company own the Madison factory, Chicago factory, and is part owner of the Kansas City factory, called the S. & S. glue factory. I had handled the product of the Cudahy factory prior to this time. I had handled the product of that plant from its commencement.

When this factory was completed I think its capacity was 10 or 12 thousand pounds per day. When the factory was completed some of the stock, owing to the delay in putting up the factory, was in the lime vats too long and was overlimed. I refer now to the fleshings. If the fleshings are left in the vat more than 10 or 12 days it gives a weaker glue and less yield. The lime will eat up some of the glutinous matter in the stock. These overlimed fleshings came from the tanners at Milwaukee. I had nothing to do with the condition of the stock when it came to the U. S. Glue Co. factory or after it came there. The stock came in fast and the factory was progressing very slow; naturally the stock had to be piled up. This made it more expensive handling the trimmings from one end of the building to the other and then again into the vats; really handling them two or three times instead of one. That was after the factory commenced operation; it cost considerable more money to handle the glue stock. They didn't have as much warehouse capacity as it was expected to take care of the stock as it came in. It was
97 piled all over the factory wherever they could find space to take care of the stock. The tanners claimed they could not hold it any longer, and had to ship it in. If there had been no accumulation of stock, and the stock had come in regularly, as the factory was designed to receive it, the trimmings would have been taken care of and put in vats and treated for the making of glue. There is a railroad track through the center of the vat-house. The cars are put in the vat-house. The stock is taken into the washers and washed and put into lime vats. The trimmings are washed to get the soil out of them before being put into the lime vats. They are taken from the washers by wheelbarrows and thrown into the lime vats, where they are treated, and put back into a new bath of lime until ready for boiling. It takes about 60 days to get them ready for boiling. After being limed they go into the washers to be thoroughly treated with acid, for the purpose of killing the lime in the stock. Then they are boiled. The capacity of the factory for

liming was about 24 million pounds of stock. They have the same liming vats for fleshings and trimmings.

At the time Mr. Vogel was in our office I put the question to him what proportions he expected the 30 or 32 million stock would be, and he said, "I think it will be about one-third hide and two-thirds fleshings." I do not know exactly what the proportions of the stock accumulated there were.

The vat capacity was for 24 instead of 32 millions, because at the time the bids were talked about each of the tanners brought in the amount of stock they produced the year previous, and instead of 30 to 32 million pounds of stock they found they would only
98 have a maximum of 17 million pounds. That was figured up by Mr. Vogel himself. Mr. Vogel and the other gentlemen thought it would cost too much money, and they talked over whether it could not be reduced, and they wanted to know from Mr. Morehead and myself if it were possible to reduce the cost of the factory. After finding they had only 17 million pounds of stock we told them we could reduce some of the vats—some of the boiling kettles and minor things. They were figuring putting in carriers, which would have cost five or six thousand dollars. They wanted to leave that off for the present. In other words, they wanted to reduce the cost as much as possible of the factory. I talked it over with Mr. Morehead, and we came to the conclusion we could get along with less vats. The vats were put up in sections in different parts of the building. We came to the conclusion by putting in about 300 vats there would be enough of a plant. The bids contemplated a little over 400. The plans will show. The total number as constructed was, I think, 307. That was more than enough to take care of the liming of 17 or 18 million pounds of glue stock coming in regularly, in the general proportions of one-third trimmings and two-thirds fleshings. The vats are 8 x 8—four feet deep. Each will hold about 5,500 pounds of trimmings at one time for liming. They are large enough for about 7,000 pounds of fleshings at one time. It takes about 50 or 60 days for trimmings and 10 to 12 for the fleshings.

There were difficulties in the early boilings of the factory. The main difficulty was labor. They could not get any men. They were short of hands to handle the stock. They tried to get all the men they possibly could, but they were always short.

The best season for the manufacture of glue is in the fall
99 and winter. The worst is in the summer. From my experience you can never start off a factory running smoothly. It is like building a house; always find some little thing missing; same thing in factories. When you start off there is this and that wrong. It always takes a little time to get the thing in proper shape. At this time there was no glue factory in this part of the country.

After the glue was boiled I got the samples in Chicago and tested it. After the testing we assorted them in different grades. Glue is ordinarily sold on test. I was acquainted with the market prices of glue stock of the character that was turned into this U. S. Glue Co.

factory in 1898. We had had contracts with the Milwaukee tanners for years. We bought stock in other quarters besides. I had handled glue stock since 1876. In my judgment at that time fleshings were worth about 40 cents per hundred pounds, trimmings about $1.25. Calf trimmings were worth about $1.50 a hundred pounds. I am acquainted with what are called the manufacturing sheets put in evidence. I examined them as they came in. The Diamond Glue Co. keeps sheets for this purpose. We showed Mr. Hansen how to keep these sheets when he came to Chicago. Their methods of keeping the accounts differ from ours. There is a certain charge there of $100 a day for interest, they call it, which we never charge. I think the blank is our blank. I talked with Mr. Hansen, and, I think, Mr. Vogel, about the way these sheets were filled in. Mr. Hanson said the $100 was Mr. Vogel's orders. I don't think he knew it himself, simply it was done according to Mr. Vogel. Interest, or wear and tear, I don't know what they called it. I never got at the bottom of it. I spoke of it several times. In
100 making up a proper statement of manufacturer's cost of glue, the items of coal, labor, zinc, acid, and barrels should go in. I would add to these items the glue stock to get the cost of the entire product, deducting the grease. The grease was never deducted from those figures. To arrive at the net costs of the glue you have to deduct the yield of grease. They haven't done it in this case.

From a computation based on the figures in this statement the prices for materials would be two cents for calf trimmings, $1.75 for hide trimmings, and 75 cents for fleshings. Some horse fleshings went in. I am not quite clear whether they put them at 60 cents or higher. It has slipped my memory. I think they went in for less than the cattle fleshings; if I am not mistaken, at 60 cents. In my judgment a fair market value for the horse fleshings in 1899 was about 20 cents a hundred. I really don't know whether it was customary with anybody else to figure an item of $100 a day for interest or account of capital, to be included in sundries and used as a basis for figuring either the cost per pound of manufacturing or the cost per pound of glue; it was not with me. I never figured interest on the manufactured article and I don't think I ever heard of anybody making any such charge.

During the operation of the plant I did not at any time give any orders of any kind or directions as to any of the U. S. Glue Company's employees. I never at any time determined any of the prices that were to be charged or to be paid by the U. S. Glue Co. for its glue stock. I never determined any of the salaries or the prices to be paid for any materials, fuel, or otherwise, that were to be used in the operation of that factory. Nobody connected
101 with the Diamond Glue Co. ever did.

The factory should be run at its full capacity. It thereby reduces the cost of manufacture. In other words, the expense of manufacturing is so much less per pound by running the factory to its full capacity. All the items of expense in operating are practically the same whether the product is up to the capacity of the

factory or only a small production, with the exception of additional labor. The labor would perhaps be a little more, because we had to handle more stock, but it would not be very much. If the factory ran full capacity one day and half the next it would only make that much less glue. You make up one day, you lost the other. For the week ending September 30th the manufactory was run to its full extent two days. The week of October 7th there were four days. The sheets show October 3rd, 12,334 pounds; October 4th, 13,822 pounds; October 5th, 10,480; October 7th, 12,492 pounds. Then the week ending October 14th there were three days. I make it that it ran at full capacity only 17 days.

Cross-examination:

The plant was not operated to its full capacity because of a shortage of steam power. Bossert did not put enough boilers in, made miscalculations. Three were put in and one old boiler in the vat-house afterwards. There were four boilers on the plans, 1,100 and some horse-power all told. 1,100 horse-power were put in.

Q. How many did the plans call for?

Objected to as not cross-examination. Objection overruled. Exception by plaintiff.

A. Fifteen, I think, was told to Bossert was needed; 1,500 horse-power.

102 The Diamond Glue Company did not operate the factory at all. It assisted in the operation. I used to come to Milwaukee and I used to talk over things with the superintendent; assisted in an off-hand way; used to go there twice or three times a week and talk things over so as to help him along, see how things were going. I gave no directions in regard to running the factory. My understanding is that all the Diamond Glue Company did in regard to operating the factory was to assist and advise.

In our own factory's account the items, zinc, acid, and barrels, went into sundries. The rent went in, but not in the sundries account. It went in another column. I got up this form of manufacturing sheet for the U. S. Glue Co., but thought the rent column not necessary; they owned the factory.

Q. But in arriving at the cost of manufacture by the Diamond Glue Co. in its factory you considered rent as one of the items of cost?

A. I figured that we rented; yes, sir.

In our own manufacturing account we included manual labor. Perhaps part of the salaries of the manager were included, and I think part of my salary. I did not include insurance. We carried a regular insurance account, never added it to manufacturing. Lime and salt belong in sundries. I never did any glue-boiling. I said fleshings should be limed 10 or 12 days. We don't lime some fleshings at all, just work them right up a good many times. A good many manufacturers do the same. Perhaps if we have too much stock we leave them longer in the vat, but 10 or 12 days is sufficient.

We always figure from 5,500 to 7,000 for a vat. I don't weigh stock into the vats myself, but I have seen vat books and
103 know what the size 8 x 8 will hold.

If the trimmings are of heavy hides they should be limed 60 days and reworked between times. I went up there sometimes twice, sometimes three times, and sometimes only once a week until Mr. Morron told me we were stopped suddenly by letter.

Q. Letter from whom?

A. I understood that way. The contract was cancelled, as I understood. Mr. Harden took Mr. Morehead's place some time around the latter part of September or in October.

In my visits I found the vats were not taking care of the stock. They had an accumulation of too many trimmings and not enough fleshings. The first fleshings we put in were overlimed; we could not help it; it took so long to put up the factory. They are injured if overlimed. I had no personal interview with Mr. Vogel in regard to the horse fleshings. I had nothing to do with fixing the price at which they were taken.

I should judge you can, perhaps, get ten per cent. more gelatine out of the calf than hide trimmings. It is worth more than regular glue. The prices are from 15 to 35 to 40 cents a pound. These sheets do not give the gelatine yield. I know that there was gelatine produced, but I do not know how much. There is no column for that.

Redirect examination:

The Diamond Glue Company furnished Morehead and Harden at two times as superintendent for the U. S. Glue Co. When I was up to the factory to help bring out a good product the United States Glue Company did not ask me to do anything that I did not do, that I know of. They asked no service, to my knowledge, that I failed or refused to render.

104 The cost of making gelatine is, I should judge, 3, 4, or 5 cents more a pound than that of making glue. It is very thin in the first place, and you can only put a small quantity on a net. It costs more for handling—more all around. Instead of making, I would say, a thousand pounds of glue, you can, perhaps, make only 200 pounds of gelatine. Gelatine slices and glue is cut in chunks and afterwards run through a cutting machine, then they lay it out on nets, and what we call thin cutting is the thin slices which we make. Mr. Morehead is the originator of the machine that cut the glue. That machine was furnished the U. S. Glue Co. by the Diamond Glue Company, in whose employ Mr. Morehead originated the machine. It is the cutter referred to in the correspondence. Pretty nearly every large manufactory in the country has from one to four of the Morehead make of cutter. After the gelatine is taken off it makes the other glue a lower quality. Making gelatine is taking off the cream.

W. H. MOREHEAD, sworn as a witness on behalf of the plaintiff, testified as follows:

I am 47 years old. I reside in Chicago. I am superintendent of the Diamond Glue Company's factories. I have been engaged in glue manufacturing since 1882, I think. I have had considerable experience in that time and regard myself as a practical glue man. I have had charge of several different factories. I started in Cincinnati in 1882 as engineer in the factory of Layton & Cline. I took charge of the engine for six or eight months, and from there I went into the boiling department. I think in three or four months after that I had charge of the boiling department and continued with them until they sold out to the Bader Glue Co., I think, in
105 1884 or '5. The boiling department is the glue-making part. From there I went down to Madison, Indiana, to take charge of a small factory there. A party by the name of Layton started in business there and ran it for four months. I was superintendent. He sold out to J. Spiegel & Co., of Cincinnati. I had charge of the factory until 1894 or '5. From there I came to Chicago and took charge of the factory for the Diamond Glue Co.—the Canal Street factory. I had charge of that factory for a couple of years. From there I went to Kansas City and had charge of the S. & S. glue factory, I think, from the 1st of January, 1898, until about the 1st of July, 1898. I then came to Chicago and was asked by Mr. Freshman to draw sketches or a rough plan of the factory which was to be put up in Milwaukee—a factory to take care of about 30,000,000 pounds of glue stock per year. I made some sketches, and was probably at work at that for a week. Mr. Freshman, Mr. Morron, and I came to Milwaukee and brought these sketches with us. We met Mr. Vogel at the Pfister hotel, and we was going out to look up a site to put this factory on. There was one at North Milwaukee and one at South Milwaukee. We went first to North Milwaukee. Mr. Vogel didn't go there with us, but took us down to the Northwestern depot, and there we met Mr. Albert Trostel. He went with us to North Milwaukee. We looked the grounds over, didn't think they were very favorable, and decided to go down and look at the site at South Milwaukee. In the afternoon of that day we went down to South Milwaukee, Mr. Fred Vogel going with us, and I think it was while going out there that he looked at the sketches we had made. We also looked them over after we got on the ground and talked the matter over whether we could put
106 buildings of them dimensions and put up in that manner on the grounds we had there. I remember very distinctly that Mr. Vogel said in my presence that he understood that these plans were to turn out three million pounds of dry glue, and he would like to have them large enough for an increase of about 25 per cent. without adding to the buildings in case the business should increase. That was either out on the grounds or talked over in the street car. That must have been somewhere — the 12th or 15th of July. I don't remember whether I left the sketches in Milwaukee or brought them back with me. That evening Mr. Trostel brought Mr. Finkler down to the Pfister hotel and introduced him to me, saying he

would be the architect to do the work on that building. The next day I went back to Chicago.

Some two or three days after I went back to Chicago Mr. Finkler and Mr. Bossert came down to look over our old plant at Robinson and Canal St. They wanted to become familiar with driers, vat and wash-mills, glue kettles, and everything pertaining to a factory. Mr. Bossert was mechanical engineer for the Pfister & Vogel Leather Co. Mr. Finkler, Mr. Bossert, and I went out and looked the factory over. Probably Mr. Freshman was along. I don't remember. I am not positive whether my sketches were there then, but I think they were, because there were some alterations made while Finkler and Bossert were there. They were made between us. I think the main buildings were left about as they were, but some little change made in the power-house; just what, I don't remember. It didn't amount to very much.

The sketches prepared designed a factory to take care of 30,000,000 pounds of glue stock, about ⅓ trimmings and ⅔ fleshings. I
107 had originally laid out, I think, 400 or 400 and some odd vats. I asked for 1,500-horse power. I didn't get the amount I thought we would need to do the work. I asked it from Mr. Bossert when we talked the matter over. I met Mr. Vogel, I think, on my second trip to Milwaukee. He was on his way out to the tannery. He took me out and introduced me to Mr. Bossert as his mechanical engineer and told me he would look after the machinery and what was needed. I was to talk matters over with him and tell him what I wanted and make suggestions and work the matters out between us. It was shortly after this I told Mr. Bossert this factory should have 1,500-horse power. I think the power was about one of the first things we got down to. I saw the plans and specifications prepared by Finkler afterwards. Mr. Bossert made the drawings and blue prints of the power-house, if I am not mistaken. It provided for 1,050-horse power—three batteries of 350 each. He said it was all that would be required to take charge of what machinery and work we had to do.

The original sketch I made provided for 400 vats. I think the plans were drawn on the same lines. 308 were put into the plant, if I remember rightly. I think they were reduced to 308 about the 1st of October. The matter came up about the time the bids were opened. It seems the figures ran considerably higher for the putting up of this building then had been expected. Mr. Vogel said so. Mr. Vogel and some other parties met there—the stockholders, I believe—on that day and wanted to know if it was not possible to cut down the cost of the building in some way. They asked Mr. Finkler, the architect, to see what changes he could make in the construction to lower the cost—asked Mr. Bossert what he could do in the
108 way of cutting out machinery or making changes in the plant as he had it then laid out; also asked me how much I could cut out. Mr. Finkler made some changes; Mr. Bossert, I think, made some, and I left out some kettles; I don't remember how many. A section of vats was left out. The tanners, after the blue prints were finished, thought the cost entirely too great. It was talked

over between them in my presence. I told them I could not take care of that large stock with a smaller factory. Mr. Vogel then suggested they would all look up their last year's shipments and see what their output had been for the year previous to this. They found they had produced between 17 and 18 million pounds. I told Mr. Vogel if I had known that and drawn my plans to take care of that much glue stock the factory would have cost less money. The stockholders then looked the plans over and decided to leave the walls and size of the buildings as they were, making what changes they could in the construction and appliances to cut down the cost to take care of what glue stock they had—between 17 and 18 million pounds. The number of vats as reduced I considered ample to take care of that stock per year.

The building was a very fine one, put up very substantially with brick and iron, heavy foundations under it, that would stand there for years. It was an expensive building. While these plans were drawn up I was with Mr. Finkler, the architect, and made suggestions to him as he went along with the work. Some changes were made, and others he would not make. About all the orders I received were from Mr. Vogel to get the factory going as soon as possible. He was president of the U. S. Glue Company and was on the grounds, I think, more than any of the other stockholders.

109 I was with the U. S. Glue Co. from about the first of August, 1898, until, I think, September 1, 1899. I received my wages during that time from the U. S. Glue Co. I did not receive any compensation from any one else. I was superintendent of this factory up to September 1, 1899. Mr. Harden was superintendent after that. We were delayed in the construction of the plant very much in the early fall by bad weather. There was a good deal of rain, and the ground is in a terrible condition out there. Whenever it would rain the ground got like putty. You could not get through. It delayed us with the foundations. After they were in we were delayed a good deal by cold weather. It was too cold for bricklayers to work, and there was a good deal of time lost in that way. We were delayed considerably by machinery coming in slow, and one thing and another which we needed at times we would have to wait for. It was very hard to get labor there. It was almost impossible to get men enough to run the plant. After we had it in operation we didn't have men enough to run it at times. Nothing that was to be received from the Diamond Glue Company delayed the construction of the plant, that I know of. I was there during all the time of the construction. The plant was ready for operation about the latter part of July. I cannot just recall the day on which we started. One thing we had to contend against in starting was hot weather. The factory was started in the hottest part of the summer, you might say, and, on the other hand, we had glue stock which was overlimed and in bad condition to work with at that season of the year. It is hard to destroy the lime; got to wash the stock and dry it and treat it with acid, and in the end it is a weak glue, with not the strength and elasticity of a glue not

limed too much. I had to evaporate that glue very heavy to
110 hold it; keep it from melting after it was laid out. The accumulation of stock was such that there was no place to put it. It began to come in after the first of the year 1899, and the factory was not in shape to receive it. The various tanners claimed they had no place for the stock, and must ship it to the factory. I took it in as best I could and put it in piles until we got some vats finished, which, I think, was some time in February. I am not sure of the time. I got one section of 77 vats in, and as the stock came in at that time—fleshings—I immediately put them into the vats and kept them there, filling the vats as we got them in. We had to watch the stock, take care of it, handle some of it, add more lime to it.

When we began operations we had an accumulation of six months in trimmings and five months of fleshings; that was in our way to a certain extent. The cost was considerable. It was handling that stock once more, and the most of it we had to cart from one building and another to the building in which our washers were to take care of it; kept quite a force of men busy.

Hide stock is from cattle. Bone stock makes a distinct kind of glue. Hide stock does not include goat, sheep, or horse trimmings.

It costs considerable more to manufacture glue in hot weather, because in the heat and humidity of the air the glue won't dry. You can't load your tunnels or dryers so full, because the air blown over the glue is so loaded with moisture. Before it is put in the dryer it picks up every little moisture and the glue dries very slowly. There is an extra expense in cooling. We have to haul in a supply of ice or put in an ice machine and put it in a refrigerator. In the beginning of the operation we were short of power.

111 One of the letters speaks of difficulty in the evaporator. The machine carried glue over the pump and it was lost in the water that passed through the pump, which passed through the condensor. I don't know who ordered the machine. My judgment was that the machine was too small—that is, the chamber was too small for the amount of heating surface it had in it. When the steam was turned in and glue began to boil it boiled up high near the opening in the roof, where the vapors were drawn off by the pump and considerable of the glue was drawn off with the vapors. I could not say positively whether change would have corrected the errors. I think it would. I have seen one of their machines modified and we had no trouble. The Diamond Glue Co. had nothing to do with the defect in this machine as originally produced.

The factory shut down after it began. About the latter part of August, I think it was, we got behind with the stock which should be prepared for the manufacture of glue; hide trimmings, for instance. We were running altogether on fleshings and we had no hide trimmings prepared except some few vats which came in in limed condition from some parties. It was impossible to get help, too, to prepare stock every day for the kettles and for the day's work and get the assorted trimmings we had piled up in various places over into the factory and washed up and vatted and limed. I pro-

posed to Mr. Vogel we would shut down the factory for ten days or a couple of weeks and put the entire force on separating the stock and get as much of it in vats as possible, and he thought it was the right thing to do. I shut down the factory about the latter part of August, and I don't think it had started by the first of September, when I left there.

112 In regard to the difficulty in getting workmen, we were about a mile and a half or two miles from South Milwaukee, which is the nearest town, and we could draw very little help from there, as most everybody who lived there was employed there. We had a few men from South Milwaukee and got some from the surrounding country. We tried to get men in Chicago, but they would not stay; seemed to be *be* dissatisfied. Some would stay half a day, some all day, some two or three days; some would wait until pay day and then quit. The U. S. Glue Co. had fifteen houses built at Carrolville and there were two boarding-houses or saloons there and there were some farm-houses around. There was one store. The houses were to get men to move there with their families, and perhaps some would take boarders, and in that way we could hold some.

As to whether the delays were unusual, there is always more or less trouble in hot weather in running a glue factory. It would be much harder to start a new plant than to go ahead with an old one, because in an old plant you have everything in running gear; you have your help educated to what they have got to do; every man knows his business and has to perform it. In a new plant like the one at Carrolville we started in bad weather, to begin with, with overlimed glue stock, shortage of help; what help we had was mostly green and had to be educated; shortage of power and other troubles came up which were unexpected, adjusting machinery and one thing and another. The amount of horse fleshings mixed with the other stock made the glue of a sufficiently lower grade to be noticeable.

113 Cross-examination:

I did not hear any talk about building a glue factory of five million pounds capacity. I do not think the question of glue stock was ever talked over very much with either Mr. Finkler or Mr. Bossert. They spoke of the capacity of the factory by product or by stock. Mr. Vogel expected the factory to turn out three million pounds of dried glue, and he also wanted the buildings large enough for an increase of 25 per cent. without adding to them. He said somewhere in the neighborhood of 25 million pounds of that grade of stock would turn out about three million pounds of glue. The stock in good condition yielded on an average 13 or 12½ per cent. The idea was to cut the apparatus, machinery, and plans down to a capacity for 17 or 18 million of stock. The buildings were left according to the original plan. I cannot recollect the exact conversation we had in regard to changing the boiler capacity. I do not think he made any changes in the boiler capacity. He had arranged for two more boilers, I think, in his drawings for the boiler-house.

He put in three and also put in foundations, I think, for two more, which were to be put in later if we needed them, but he claimed the three boilers were sufficient to do this work. I told him it was not sufficient boiler power; stuck to that argument from the start of the factory that we would be short of boiler power.

I had had several years' experience in running a hide and calf glue factory before this with different factories. I had run a hide and calf glue factory through the summer months at Madison, Indiana, I think, in the year 1894 or 1895. That factory may have closed down on some days, but we figured on running. We had ice there for cooling our jellies.

114 Fleshings make an inferior glue if overlimed. The yield is not as large and the glue has not the strength; some grease is lost in overliming. Horse fleshings make an inferior quality of glue. I think they came mostly from Pfister & Vogel. They were often mixed in with the other fleshings. They were weighed up separately, I think, when they came in; if they were not divided, they were weighed up as cattle fleshings; 10 or 12 days is what we figure on liming fleshings. I don't know whether any of the fleshings were limed from February until the last of July. I took the first that came in, as soon as the weather would permit, out and dried them; took them out of the vats and spread them. We also put in a platform for dried stock. Mr. Freshman came up frequently. I don't think any directions were given me in regard to the conduct of the manufactory; left entirely to use my own judgment in the running of that plant so far as making the glue was concerned, and we would talk matters over in a general way.

Redirect examination:

I said, I believe, that stock would yield about 13 per cent., take it as it came from the tanners. After it had accumulated and taking it in the condition it was when I saw it the fleshings would not yield that; I could not say how much less, but I think in the neighborhood of 2 per cent. There is a decrease, because the gelatine is destroyed by overliming. There is some loss in the drying and in the washing. The average production of grease would be about 8 per cent., I think, on fleshings. On this stock the grease would be computed at 8 % on ¾ of the total hide stock, if it were averaged. The yield of grease in these accumulated fleshings was less, but I cannot tell how much less. I had charge of the factory only

115 a short time after it was started. It was less than the average because of the overliming which destroyed the grease.

Glue stock comes in a good many different sized barrels and packages. A salt barrel will weigh, I think, in the neighborhood of 200 pounds; a sugar barrel will probably weigh 300; depends considerably on the condition of the stock. It ranges between a minimum of 200 and a maximum of 300. These fleshings were limed more than the usual time, because it was the only thing we could do with them. They accumulated there and we had to take care of them the best way we could. If we had not put them in the

vats, there would have been considerable loss. If the stock were piled up in large piles, it would be apt to heat, burn, and decompose. You open up a pile and you will find a cavity in it; you will be apt to find it mushy and totally destroyed. We could not have done any better than we did, with this stock piling in from the tanneries and our factory incomplete.

Recross-examination:

If the stock had been sold, that would have been a different thing. Under the conditions in which I was working I had to take care of the stock. The fleshings could not have been treated at once, because winter months' fleshings won't dry.

ARNOLD FRESHMAN, recalled as a witness on behalf of the plaintiff, testified as follows:

In regard to the manufacturing sheets, I did not mean to be understood as saying that we had a column headed rent. I said we had a column where we put in the rent of the Chicago factory and also part of my salary. The $25 I referred to consisted of part of
116 my salary and the rent. I think the rent was about $8 a day. That was the actual rent the factory had to pay. I dictated and signed this letter dated January 12, 1899, to Mr. Fred Vogel, president of the U. S. Glue Company, and caused it to be sent.

Letter offered and received in evidence, marked Ex. 7*a*.

The statements as to prices in the fore part of this letter are true.

I wrote and sent this letter dated March 23, 1899, to the United States Glue Co.

Letter offered in evidence and marked Ex. 9*a*.

These statements in regard to hide trimmings were true.

I wrote and sent to the U. S. Glue Co. this letter dated November 16, 1899.

Letter offered in evidence and marked Exhibit 26*a*.

The pencil memorandum on the letter is in Mr. Vogel's handwriting.

Pencil memorandum offered in evidence as follows: "Accept order."

The copy of letter shown me is a true copy of a letter written and sent by me to the U. S. Glue Co. November 27, 1899.

Copy of letter offered in evidence, marked Ex. 32*a*.

I know something of the so-called Gallun stock that has been mentioned. I did not have any knowledge as to its purchase by the U. S. Glue Co. The matter was talked over, I think, at a meeting I attended at the Pfister hotel, whether it would be advisable to buy that stock which was offered them, and during that conver-
117 sation I suggested they find out what they could buy it for, and the next time I came up the stock was bought; I never knew at what figure. I had charge of all matter of purchase of stock so far as I was consulted. The only consultation with me is the one stated and the only connection the Diamond Glue Company had with it.

My statement yesterday of the market value of this glue stock was based on contracts which the Diamond Glue Company had with other tenants covering similar stock. Besides these the Diamond Glue Co. had made, I am acquainted with the so-called New Jersey and Newark glue stock. The Newark fleshings I considered worth considerably more than the Milwaukee fleshings. The hides are fleshed at first for grease and afterwards scoured, and that is the best stock for making glue. I have seen gelatine made out of it. I think the market for the same quality of glue stock in the region of the East, Newark and New Jersey, and the same quality of glue stock in this region in 1898 was about the same. I think there were no scivings in such materials furnished to the U. S. Glue Co. during 1899, prior to December 1, with the exception of a small quantity made by Pfister & Vogel they called scivings. It was a trifling amount, and I think there was no price set on it. Scivings and shavings are about the same thing.

I was acquainted with the contract J. Speigel & Co. had with Eisenbrod & Co. in 1899. The Eisenbrod tanneries were located in Chicago. I should think they produced during the year ending April 30, 1899, to exceed 3,000,000 pounds per year. The glue stock at those factories consisted of calf trimmings, calf fleshings, and horse trimmings, horse fleshings, horse butts, and, I think,
118 some hide trimmings—a very little, if any. There was no difference in the market prices of glue stock of this character in April and succeeding months of 1898 and of the same period of 1899. I don't think there was any difference in value in the other half of 1899 as compared with the first half of glue stock of these grades we have mentioned. The contract of Spiegel & Co. with Eisenbrod & Co. here produced is the basis of my opinion of the market value of this glue stock.

Contract offered in evidence. Objected to as incompetent to prove price and because it is a contract dated April 21, 1898, commencing May 1st, 1898, and ending April 30, 1899. Objection sustained. Exception by plaintiff.

Contract marked "Exhibit 44 for identification."

Cross-examination:

I do not remember that the Diamond Glue Company agreed to take six car-loads of fleshings from the U. S. Glue Co. per week at any time. They did take some to accommodate them for a whole month, I think. Those fleshings were shipped to the Diamond Glue Co. factory at 30 Canal St., Chicago. The Northwestern Fertilizer Company was operating that factory at that time. I don't know at what rate these fleshings were put into the N. W. Fertilizer Co. The Diamond Glue Co. didn't put them in. The Diamond Glue Co. turned them over to the J. Spiegel Co. I don't know how much the J. Spiegel Co. got from the N. W. Fertilizer Co. for those fleshings. I don't know whether they were the exact fleshings.

I know the tannery of N. R. Allen & Sons, Kenosha. I know they had a contract either with Armour or Swift for the year 1899. I

don't know what figure they got for their fleshings that year. I know Remnitz Leather Co. The Diamond Glue Co. bought stock of them, I think, in 1898. *The* J. Speigel & Co. did not buy
119 any fleshings from Remnitz & Co. in 1899 that I know of.

Redirect examination:

The Spiegel Company Chicago warehouse was at the Diamond Glue Co. factory—that is, they have a factory right on their property. They had no machinery at that time. All they had was a warehouse and liming tubs and one thing and another. Mr. Spiegel attended to the stock they bought and handled; dried stock and part he sold green; made different mixtures. I am acquainted with the character of the Allen stock just referred to. It was high-grade stock. It is a high-yielding stock, both in grease and glue. I would consider that stock worth 50 per cent. more than the stock furnished the U. S. Glue Co. We had the Allen plant glue stock years ago, and I was acquainted with the character of it. I don't know much about the Martin plant stock. I think there was a short time we had a contract which we assumed from our predecessor. After we bought the factory we received the product under this prior contract, but I don't know for how long a time. I think the Remnitz Leather Co. makes at the rate of five or six cars a month, both fleshings and trimmings taken together. I do not know the character of their product in 1899. We had it in 1898.

Recross-examination:

It must have been ten or 12 years ago that we were getting the Allen stock. I have not seen the stock since, but a practical man that was getting that stock told me it was worth 50 per cent. more than the Milwaukee stock.

Redirect examination:

I knew of the Allen stock on the market, aside from personal inspection of it. I know the method of their factory. The
120 difference in their stock is caused by the difference in their manner of fleshing. I understand the Allen stock is the same now as when we handled it. Among glue-makers the stocks of different glue-makers have a market rate where they manufacture by the two methods (hand fleshing and machine fleshing). Things are talked over in an offhand way and stocks are talked of—the stock this man makes, the stock the other man makes—and my information in regard to the Allen stock is based upon my personal acquaintance with it 10 or 12 years ago, and the present standing of that stock with the trade, and the method which is used there in its production.

Recross-examination:

I think I was informed that the Allens took off their fleshings by hand, by Mr. Allen himself. All I know about it is what I have heard from Mr. Allen or somebody else.

Motion to strike out testimony of witness in relation to the Allen stock as being hand-made. Motion granted. Exception by plaintiff.

FRED BASSINGER, sworn as a witness on behalf of the plaintiff, testified as follows:

I live in Chicago, am 36 years of age, and am cashier and book-keeper for the Diamond Glue Co. I have had 20 years' experience as book-keeper. I was with the Armour Company 15 years, principally in the glue department. I had a little over two years' experience on the board of trade with Pake & Lines as book-keeper. I have been with the Diamond Glue Company about three years. With Armour & Co. I had charge of the entire book-keeping. I
121 did not keep the cost of production. I simply kept the total cost of the material produced and the general books of the glue department. With the Diamond Glue Company I kept all the books they had. In their different factories I have had charge in a general way of the manufacturing accounts and books. I know The U. S. Glue Co., the defendant in this case. I was sent by the Diamond Glue Co. to render assistance to the U. S. Glue Co. I think it was the last of September, 1899, I went to their factory, at the request of Mr. Freshman, who was there the day before. That was their factory at Carrolville. I saw Mr. Hanson, the book-keeper, and Mr. Harden, the superintendent. When I first got there I went into the office and introduced myself to Mr. Hanson and talked in a general way for a few minutes, and then we went out and met Mr. Harden and went around the factory and looked the place over. We went around in different departments, and he explained the workings of the place and what an improvement it was over some old places I had seen. I went with Mr. Hanson to the office, and he showed me his books. I made some little suggestions about changing his system so it would conform with our ideas of getting the reports of the shipments. One of them was about keeping his operating expenses separate, and one was about keeping the discounts separate. I took up a lot of forms that we used in our business to give him an idea what he should do in order to get proper results. I wanted to give him the benefit of our experience. I think he adopted all the suggestions I proposed to him as to the forms, etc., but he did not seem to like the idea of changing his books; said he might not be allowed to do it, anyway; while my idea might be a better one than they were practicing, he could not change because Mr. Vogel was the boss and he wanted them
kept his way. I furnished all the benefits that my experience
122 as a book-keeper in the glue business enabled me to furnish.

I have seen the fifteen manufacturing sheets furnished the Diamond Glue Company, now handed me, marked Exhibit 42. We mentioned in our conversation these sheets and the items in them. Mr. Hanson explained to me the way he arrived at the cost of production, just the same as it is on these sheets, stating what the different items were, how they arrived at the price of coal and labor and sundry items and material. I have gone over those man-

ufacturing sheets to make a tabulation of them all as they are there I have also made a tabulation based upon those manufacturing sheets, eliminating from sundries the $100 a day and the item of grease. I made the tabulation shown me from the original sheets received. The first column is a copy of the exact figures rendered by the U. S. Glue Co. in Exhibit 42, tabulated. The second set of columns is the same as the first, eliminating $100 a day and also deducting for grease that was produced from the stock. The third set of columns is taking their figures for the amount of glue stock used and figuring the glue stock at prevailing market prices—that is, at certain assumed prices, which are stated there—eliminating the $100 a day. That tabulation is an accurate statement of results, taking the facts as stated and based on Exhibit 42.

Tabulation offered in evidence as the testimony of the witness of his tabulations on the basis stated, marked Exhibit 45.

In each one of the three columns of the tabulation the figures represent pounds of glue. Under expense the figures represent cost of production—that is, dollars. Under cost, that is cents per pound. The figures stated under the item "less grease shipped" are dollars. The figure which is used as the amount of grease shipped is correct, based upon the shipments that went from the factory,
123 reported by the U. S. Glue Co. to the Diamond Glue Co. The figures under "cost" represent the reduction which should be made per pound against the cost of glue for the yield of grease. It is simply the figure for grease divided by the yield.

Plaintiff offers in evidence the deposition of Lester Doctor, taken before Florence Rosensteel, notary public in and for the county of New York, borough of Manhattan, State of New York, on the 23rd day of February, 1901, at the office of Charles A. Hess, No. 66 Broadway, as follows:

LESTER DOCTOR, a witness produced, sworn, and examined on behalf of the plaintiff, bein duly sworn, deposes and says as follows:

Q. What is your full name, age, and residence?

A. My full name is Lester Doctor. I reside at the Gilsey house, New York city, and my age is 34 years.

Q. What business were you employed and engaged in in the years 1899 and 1900 and with whom?

A. I was engaged and employed in the glue-stock business by the United Tanners' Glue Company, a corporation organized under the laws of the State of New Jersey, and doing business in that State, in the State of New York, and elsewhere in the United States, as bookkeeper, cashier, and assistant to the treasurer.

Q. What was the nature of the business of the United Tanners' Glue Company?

A. Engaged in the business of buying and selling glue stock used in the manufacture of glue from various tanners in the States of New York, New Jersey, and Massachusetts.

Q. Do you know what the aggregate amount of glue stock
124 was so purchased in any one year from the various tanners?

A. It aggregated, to the best of my knowledge and belief, 25,000,000 pounds per annum.

Q. Please describe the various kinds of glue stock purchased by and delivered to the United Tanners' Glue Company.

A. Pates, fleshings, shanks, calf trimmings, limed and salted, calf fleshings, goat trimmings, and goat fleshings.

Q. Are you familiar with the prices paid for the various kinds of glue stock purchased and delivered to the United Tanners' Glue Company? If so, please state what those prices were.

A. Green salted pates, $1.20 per hundred pounds; green limed, mixed fleshings and shanks, 60 cents per bushel; green salted and green limed calf trimmings, $1.50 per hundred pounds; green limed calf fleshings, 18 cents per hundred pounds; goat trimmings, 70 cents per barrel, and goat fleshings, 14 cents per barrel.

Q. During the time that you were employed with the United Tanners' Glue Company did the said company have any outstanding contracts for the purchase and delivery of glue stock?

Defendant objects to this question and the one preceding it; that the testimony called for is irrelevant and immaterial. It appears that this is a concern purchasing for the purpose of selling in the market, and that the price which is fixed by this witness and by the contracts, presumably, to which he is about to testify, are prices which are paid, not by manufacturers in the open market—manufacturers of glue—but by dealers in such stock for the purpose of resale for profit, and those prices are not the proper basis upon which to fix the market value as furnished to manufacturers.

Objection overruled. Defendant excepts.

125 A. Yes, sir.

Q. As cashier, book-keeper, and assistant to the treasurer, were you familiar with and did you have knowledge of contracts which the said United Tanners' Glue Company had with tanners and others for the delivery to and purchase by it of glue stock?

A. Yes, sir.

Q. Did the United Tanners' Glue Company have contracts for the purchase of glue stock with the tanners? If so, about how many, their duration, date, and amount of glue stock involved?

A. With the exception of two or three dealers and tanners the United Tanners' Glue Company had about 25 contracts for the purchase and delivery to it of glue stock, very nearly all of them being made about January 1st, 1899, and involved a delivery and purchase estimated at something like 30,000,000 pounds per year. Very nearly all these contracts were for a period of ten years from about January 1st, 1899.

Q. Were you familiar with the prices paid for glue stock to the various tanners with whom the United Tanners' Glue Company had contracts prior to the making of the contracts specified by you?

A. Yes, sir.

Q. What were those prices?

COURT: That is a question of what was paid by the United Tanners. Do you claim that to be admissible for establishing a market price? I think the objection will have to be sustained. My supposition was that he was to testify to values in the market and not to those fixed by this particular company.

Mr. BANCROFT: This question now relates to prices at a time prior to 1898 and prior to the contracts.

126 Mr. LINES: The whole testimony in that deposition relates to the prices paid by the United Tanners' Glue Company.

COURT: If that was the question, I should want to hear you on its admissibility.

Mr. BANCROFT: The question which I was reading referred to prices paid for glue stock prior to 1899. The witness is testifying to the prices paid for a large quantity of glue stock in that territory during the period in question.

COURT: That is not admissible. Individual circumstances, however large, are not admissible to prove the market value. The objection is sustained to any answer to the individual transactions of the glue company.

Exception by plaintiff.

Mr. BANCROFT: The objection is sustained to all questions in relation to values?

COURT: That is, to all questions relating to prices paid or contracts made by that company which he represented.

Exception by plaintiff.

CHRISTIAN ANSTEDT, JR., sworn as a witness on behalf of the plaintiff, testified as follows:

It is stipulated by counsel for defendant that the authorized capital stock in June, 1898, was $300,000; that on the 7th of June, 1898, $283,000 of that stock had been subscribed.

WITNESS: I keep the record book of the company. It appears on pages 6 and 7 of the record book that there were subscriptions made to the capital stock of the U. S. Glue Company on the 7th of June aggregating $283,000, of which amount Fred Vogel, Jr.,

127 trustee, subscribed to $100,000. The certificate for that subscription was not issued to Mr. Vogel until some time afterwards. No certificate of stock was issued to Edward Zohrlaut on his subscription of $50,000 or to William Becker, $50,000, until later on. It appears by the record book that nothing had been paid in on the subscriptions on the 25th day of June, 1898.

Cross-examination:

On the 25th of June, 1898, we had not commenced operations; hadn't no more than just organized. Those sums were paid in for the purchase of real estate and the erection of buildings.

Redirect examination:

Q. How much of those subscriptions, can you tell, were paid for by money, and how much by glue stock furnished by the stockholders?

Objected to as immaterial. Objection sustained. Exception by plaintiff.

—. I cannot tell without looking at the books what the plant constructed as Carrolville cost prior to January 1, 1900. I should think the total cost of the plant, everything that the U. S. Glue Company owned there at the time it commenced operation in July, 1899, close on to $250,000, $225,000, somewhere along there. I do not know what proportion of that was paid for the store and dwelling-houses constructed there, but I included everything we own, the land and everything.

Recross-examination:

Those figures had been reached just about July, 1899, with the exception that the price may be a little higher. During 1899 there were some improvements made out there. I got my figures from trial balances that we had.

Plaintiff rests.

128–132 EXHIBIT 1.

STATE OF ILLINOIS, } ss:
Cook County, }

To William H. Henrichsen, secretary of state:

We, the undersigned, Jonas Spiegel, John R. Morron, and Arnold Freshman, propose to form a corporation under an act of the General Assembly of the State of Illinois entitled "An act concerning corporations," approved April 18, 1872, and all acts amendatory thereof, and for the purpose of such organization we hereby state as follows, to wit:

1. The name of such corporation is "Diamond Glue Company."
2. The object for which it is formed is for the manufacture, purchase, and sale of glue, fertilizer, and by-products, and the general dealing in such products and materials.
3. The capital stock shall be one hundred and fifty thousand dollars.
4. The number of shares is fifteen hundred.
5. The amount of each share — one hundred dollars.
6. The location of the principal office is in Chicago, in the county of Cook, State of Illinois.
7. The duration of the corporation shall be twenty-five (25) years.

JONAS SPIEGEL.
JOHN R. MORRON.
ARNOLD FRESHMAN.

* * * * * * *

133 & 134

STATE OF ILLINOIS,
DEPARTMENT OF STATE.

William H. Hinrichsen, secretary of state, to all to whom these presents shall come, Greeting:

Whereas a statement, duly signed and acknowledged, has been filed in the office of the secretary of state on the 25th day of January, A. D. 1894, for the organization of the Diamond Glue Company, under and in accordance with the provisions of "An act concerning corporations," approved April 18, 1872, and in force July 1, 1872, and all acts amendatory thereof, a copy of which statement is hereunto attached;

And whereas a license having been issued to Jonas Spiegel, John R. Morron, and Arnold Freshman as commissioners to open books for subscription to the capital stock of said company;

And whereas the said commissioners have, on the 7th day of February, A. D. 1894, filed in the office of the secretary of state a report of their proceedings under the said license, a copy of which report is hereunto attached:

Now, therefore, I, William H. Hinrichsen, secretary of state of the State of Illinois, by virtue of the powers vested in me by law do hereby certify that the said Diamond Glue Company is a legally organized corporation under the laws of this State.

In testimony whereof I hereto set my hand and cause to be affixed the great seal of State. Done at the city of Springfield this [SEAL.] 7th day of February, A. D. 1894, and of the Independence of the United States the one hundred and eighteenth.

W. H. HINRICHSEN,
Secretary of State.

* * * * * * *

135

EXHIBIT 2.

Letter-head.

MILWAUKEE, WIS., 6, 22, '98.

Diamond Glue Works, Chicago, Ill.

GENTLEMEN: The writer has been asked by the directors of the United States Glue Co. to forward the inclosed proposition to you, setting forth the conditions upon which the U. S. Glue Co. is ready to enter into business relations with you. It contains only the salient points of such a contract under which we would tie ourselves to you, leaving the minor points to be dwelt upon in a contract to be drawn up later. Knowing as you do that we are novices in the glue business, you will agree with us that it would be a material aid to us in drawing up a contract if you give us an insight into the contracts you have with Foerderer and others with reference to the running of their glue factories, which favor you will do doubt grant us.

Awaiting your early reply, we are very truly yours,

(Signed) UNITED STATES GLUE COMPANY,
Per ALBERT O. TROSTEL, *V. Pres't.*

136 (*Proposition Referred to in Foregoing Letter.*)

You are to plan (subject to our approval) and oversee and supervise the erection, equipment, and completion of the glue factory on the site to be selected by us, we to employ an architect whose plans are to be adapted to your suggestions. These plans are to include all economy of space and process gained by the practical experience you have had in building and operating your three plants, and we are also to have a perpetual right to all your labor-saving devices and all knowledge used or acquired by you in the process of the manufacture of glue.

After the factory is completed you are to operate the same for us, and by your officers personally oversee and supervise the manufacture of the product, and so obviate the necessity and the expense of any skilled or high-priced help, with the sole exception of a superintendent, whom you are to secure for us, and whose salary shall not be over $150.00 per month, you to keep us supplied with such capable superintendent at all times during the life of this contract.

You are also to handle and sell the entire output of the factory, but all such product is to be billed and sold as the product of the United States Glue Company.

During the life of the agreement, beginning as soon as our factory is ready for operation, you are to refrain from making or handling either hide or calf glue.

You are to guarantee payment of all accounts for sales made by or through you.

You are to receive a commission of 10 % on all sales of glue.

137 From the earnings of the works a net profit of 10 % on the stock is to be first set aside for our stockholders, then you are to receive 10 % of the excess of net profits over and above this amount, but in ascertaining profits 10 % of the cost of the plant shall be charged off each year for depreciation.

It is understood and agreed that the raw material sold to our company by or for its stockholders is to be sold and purchased at fair market prices for the respective grades.

The contract to cover a period of five years from the completion and commencement of the operation of the plant.

138 EXHIBIT 3*a*.

This agreement entered into this twenty-fifth day of June 1898, by and between the United States Glue Company, a corporation organized under the laws of Wisconsin, and having its home office in the city of Milwaukee, State of Wisconsin, party of the first part, and Diamond Glue Company, a corporation organized under the laws of Illinois, and having its home office in the city of Chicago, State of Illinois, party of the second part, witnesseth :

For and in consideration of the agreements hereinafter contained, the party of the first part agrees to erect, equip and complete a

glue factory on the site to be selected hereafter by party of the first part.

Party of the second part agrees to advise with, and plan with the architect of party of the first part, and to oversee and supervise the plans of said factory, and to secure such economy of space and processes as may be gained from the practical experience the party of the second part has had in the operating of three glue factories; and party of the second part further agrees to give party of the first part the benefit of all its labor-saving devices, and the benefit of its knowledge and experience used or acquired by it in the manufacture of glue.

It is agreed that the site shall be selected by party of the first part within sixty days from the signing of this contract, and that the factory shall be begun and completed with the least possible delay after the site is selected.

It is further agreed that party of the second part shall have the management of the manufacturing in said factory, and shall operate the same for party of the first part and furnish a superin-
139 tendent whose salary shall not exceed $150.00 per month to party of the first part, and that party of the second part, by its officers, shall give said factory such personal supervision as may be necessary from time to time in the operation of the same, and said officers will give party of the first part in the management and operation of said factory the benefit at all times during the life of this contract, of the experience and knowledge of said officers and their company.

Party of the second part agrees to keep said factory supplied with a capable superintendent at all times during the life of this contract, whose salary shall not exceed the amount hereinbefore stated.

It is further agreed that party of the second part shall control, handle and sell the entire output, including glue and by-products of said factory, and all such products shall be billed and sold as the product of the United States Glue Company, but it is agreed that all invoices shall be stamped—"Diamond Glue Company, exclusive sale agents."

During the life of this agreement, beginning as soon as said factory is in operation, party of the second part is to refrain from manufacturing either hide or calf glue at any of their factories. Party of the second part guarantees the payment of all accounts for sales made by or through it.

It is further agreed that party of the second part shall receive a commission of ten per cent. on all sales of glue or by-products; thereupon ten per cent. of the cost of the plant shall be charged off each year for depreciation; of the net profits remaining ten
140 per cent. upon the present capital stock shall be set aside for the stockholders; thereupon party of the second part shall receive ten per cent. of the excess of net profits over and above the ten per cent. dividend.

It is understood and agreed that the raw material sold to the United States Glue Company by or for its stockholders is to be sold

to and purchased by said glue company at the fair market price for the respective grades.

This contract is to cover a period of five (5) years from the completion and commencement of the operation of the plant.

(Signed) UNITED STATES GLUE COMPANY,
By FRED VOGEL, JR., *President.*
C. ANSTEDT, JR., *Secretary.*

DIAMOND GLUE COMPANY.
J. R. MORRON,
[SEAL.] *Vice-President.*

141 EXHIBIT 3*b*.

Diamond Glue Company letter-head.

6, 27, 1898.

United States Glue Co., Milwaukee, Wis.

GENTLEMEN: Confirming our verbal understanding of the amendment to the agreement signed by the Diamond Glue Company and the United States Glue Company on the 25th inst., we herewith make it a part of agreement above mentioned. In addition to the ten per cent. excess profits that the Diamond Glue Company is to have, it is further agreed and understood that on all excess over and above $25,000 the Diamond Glue Company shall have twenty per cent. of the same.

Kindly confirm this by letter, so that we may attach it to the contract.

Yours very truly,
(Signed) DIAMOND GLUE COMPANY.
J. R. MORRON, *Manager.*

142 EXHIBIT 4.

Diamond Glue Company letter-head.

7, 27, '98.

Mr. Fred Vogel, c/o Pfister & Vogel Leather Co., Milwaukee, Wis.

DEAR SIR: I am going away Friday to be gone until Tuesday morning; just a short trip, but I have rather been awaiting a line from you as to developments in location so that we can get down to business just as soon as possible. Of course we want to be running in good order by Jan. 1st. We are making all our plans accordingly, and are laying the wires on entirely different lines than heretofore so as to meet these conditions. I know you are just as anxious to commence as we are, but I thought I would write you a few lines to let you know that we are awaiting your further instructions. Mr. Moorhead will probably be back here next Monday, and will be at your service from that time.

With kind regards, yours very truly,
(Signed) J. R. MORRON.

Are the specifications pretty nearly ready?

143 EXHIBIT 5.

Diamond Glue Company letter-head.

10, 27, '98.

Mr. Fred Vogel, Jr., pres. U. S. Glue Co., Milwaukee, Wis.

DEAR SIR: I want to congratulate you upon the cut of the new factory that we find in the "Hide & Leather" under date Oct. 22d. In writing up this article one thing was left out, and that was that we are to handle the production. All advertisements of this kind help to move product, and will put things into the channel into which they are to run. Please draw the attention of whoever writes these articles to be sure and put this in in all future ones so that the ball may be taken up on top of the hill and ready to be pushed off Jan. 1st.

Yours very truly,

(Signed) DIAMOND GLUE COMPANY.
J. R. MORRON,
V. Pres't, Manager.

144 EXHIBIT 6.

Diamond Glue Company letter-head.

1, 19, '99.

U. S. Glue Co. Ans. Jan'y 31, '99.

Mr. Fred Vogel, Jr., c/o U. S. Glue Co., Milwaukee, Wis.

DEAR SIR: I just returned from the East and I note the prices that the tanners desire to charge for their glue stock for the coming year, and I want to add to what has already been written you that at the present prices of glue (and the present prices look to me as though they would remain for some little time) there can no concern living make money if charged those figures on the glue stock. If you take into consideration the excess price over raw material last year the earnings will be satisfactory. I think it better to tell you just what I think in regard to the matter before rather than after taking.

Yours very truly,

(Signed) DIAMOND GLUE CO.
J. R. MORRON, *Manager.*

145 EXHIBIT 7.

United States Glue Company letter-head.

MILWAUKEE, WIS., *Jan.* 11, '99.

Diamond Glue Co., Chicago, Ill.

GENTLEMEN: Mr. Zohrlaut today reported on the result of his mission to Chicago, and I should judge that I was rather put out at Mr. Darlington's prices. The board today met and fixed the price for the coming year for the members of the United States Glue Co. at

2c. for calf and $1.75 for hide cuttings and $.75 for fleshings. The price of horse hides and horse fleshings was to be left for future settlement. I trust these prices are satisfactory to you, and that the company will be enabled to make money working them up into glue stock.

I enclose you a letter received from Mr. Woelfel, of Morris, Ill., and I would like to hear from you whether you know of his stock and what price you want to make him for his next year's production.

Awaiting your reply, I remain,

Yours truly,

(Signed) UNITED STATES GLUE CO.
FRED VOGEL, JR.

146 EXHIBIT 7*a*.

Diamond Glue Company letter-head.

1, 12, '99.

Fred Vogel, Jr., president U. S. Glue Co., Milwaukee, Wis.

DEAR SIR: Replying to yours of the 11th, you certainly did not expect that Mr. Darlington was sincere in his talk with Mr. Zohrlaut.

Now, as to your prices on glue stock for the coming year, you know as well as we do that these prices are far above the average paid by others and an advance over last year's, obtained by some of the members of the U. S. Glue Co., of over 100 % on the fleshings and nearly 35 % on the trimmings, which on the face of it already shows a big profit to the tanners. Still we assure you we will do all in our power to make the business of the U. S. Glue Co. a success. We are

Sincerely yours,

(Signed) DIAMOND GLUE COMPANY.
ARNOLD FRESHMAN,
Sec'y & Treas.

P. S.—As to the Woelfel stock, we bought this stock several years ago, and discontinued buying it on account of having trouble with him, as he limed his stock entirely too heavy. We would suggest that you do not name him any price, but have him quote you his lowest price, and if we see any money in the transaction would be only too glad to purchase his stock, but we think what he expects is those fancy prices, and you know we cannot afford to pay them just now.

147 EXHIBIT 8.

United States Glue Co. letter-head.

MILWAUKEE, WIS., *Jan. 17th*, 1899.

The Diamond Glue Co., # 218 La Salle St., Chicago, Ill.

GENTLEMEN: The bearer, Mr. W. G. Hanson, is the young man engaged to keep the books of the United States Glue Co. Kindly

give him all information necessary regarding your system of accounts.

Yours truly,
(Signed) UNITED STATES GLUE CO.
FRED VOGEL, JR.

148 EXHIBIT 9.

Diamond Glue Company letter-head.

2, 6, '99.

Mr. F. Vogel, Jr., Pfister & Vogel Leather Co., Wilwaukee, Wis.

DEAR SIR: I understand you are to be home today. I would like very much to have a talk with you in regard to the matter referred to, which may not amount to anything, but at the same time I want to talk it over with you so that we can get anything there is in it together, and, secondly, in regard to the Milwaukee plant. Mr. Spiegel was up there last week and we have a letter from Mr. Moorhead this morning. The cold weather has caused delay and we want to talk to you about that stock. It may be that it would be better for us to take in a few cars here at Chicago to ease matters up a little; and, if so, we do not want to touch anything but the fleshings. We might be able to work off some of your horse fleshings along with some of the other stock, as we want everything to run smoothly as far as the glue stock is concerned. Let me know by return mail or wire just when you can be here, as no doubt other matters will call you to Chicago.

Yours very truly,
(Signed) J. R. MORRON.

149 EXHIBIT 9*a*.

Diamond Glue Company letter-head.

3, 23, '99.

United States Glue Co., Milwaukee, Wis.

GENTLEMEN: We note yours of the 21st inst. You are correct. The writer was present at the directors' meeting of your Co. when it was agreed upon that the shortages of stock should not exceed 5 % *pro rata* during the month, but that did not include shipments made to the Diamond Glue Co., so at least I understood it. You will remember the writer told you that we will not object if the shortage does not exceed 5 %, but whatever above that amount we will be compelled to deduct. We cannot take in this stock on average shrinkage, because the stock ought to be all alike—that is, all drained alike—and, if it is, there ought to be no such shortage. This I have already explained to you in person.

Now, as regards the hide trimmings, you say you can readily sell them at $1.75. Now, this is not the market. You are simply charging that price to the U. S. Glue Co. You will remember both Mr. Morron and the writer have told you that these prices are excessive, and that neither you nor we can make any money at those prices—

that is, taking — the basis present prices on glue. Even at that figure we do not care for the trimmings. The last few cars received from the Pfister & Vogel Leather Co. came out all right in weight, but those from the Commerce St. tanners seem to shrink as usual. The reason for this is because the Commerce St. tanners do not allow the stock to drain, and it does not surprise us at all in that case that the shrinkage is so heavy. We will comply with your request and report weights to you as soon as the cars are weighed up. Now, regarding the shortage on car # 64302, we have gone over the weights carefully and cannot detect any mistake on our part. Don't you think it would be a good idea on the next car received from the Commerce St. tanners to have some one come here and see the weights as we unload the car, and then no doubt you can be convinced that our weights are correct as reported? We also would request that on cars where horse and cattle fleshings are shipped that the weight of each kind be designated on the bill.

Yours very truly,

(Signed) DIAMOND GLUE COMPANY.
ARNOLD FRESHMAN,
Sec'y & Treas.

150 EXHIBIT 10.

United States Glue Company letter-head.

MILWAUKEE, WIS., *April* 11, '99.

Diamond Glue Co., Chicago, Ill.

GENTLEMEN: We have your favors of the 10th and note what you say regarding the best way to take care of the limed fleshings now at the works. Mr. Moorhead says it is impossible to dry them properly at this time of the year, and we will have to continue our efforts to find some one to buy this stock from us.

Don't you think that we are making a mistake when we hope to sell the glue works to the trust? It strikes us that with the conditions prevailing in the East there will be little chance of carrying the deal through at present. The writer was out at the works this morning, and from what he saw there does not believe that we will be in shape to do any business before July first, and we have got to find some place to sell our glue stock before that period, as it will be impossible to keep it from damaging, piled up as we have it.

Yours truly,

(Signed) UNITED STATES GLUE CO.
FRED VOGEL, JR.

151 EXHIBIT 11.

United States Glue Co. letter-head.

MILWAUKEE, WIS., *May 6th*, 1899.

Diamond Glue Co., Chicago, Ill.

GENTLEMEN: Please ship to our factory, Carrolville, Wis., 50 lbs. of good glue, and oblige,

Yours truly.

(Signed) UNITED STATES GLUE CO.
FRED VOGEL, JR.

EXHIBIT 12.

Diamond Glue Company letter-head.

7, 5, '99.

Mr. Fred Vogel, U. S Glue Co., Milwaukee, Wis.

DEAR SIR: Mr. Freshman has not been well for some time and he is going to take a little rest. I find it is just about time our factory in Milwaukee is going to start, so I have given Mr. Hardon, superintendent of our factory here and elsewhere, a letter to Mr. Moorhead, whom he knows very well, and asked him to go and spend a week or so up there to help Mr. Moorhead in any way he can at the beginning, as it will be quite a responsibility for any man, and Mr. Hardon will undoubtedly be of considerable value in consultation. We have our hearts set upon making this institution a success and will do everything in our power to further its interests.

By the way, there was an article in the paper the other day, and I am trying to find out which paper it was in—one of your daily papers—saying that the American Glue Company was about to buy your company out, and a lot of other things. The American is advertising a little too much on the Milwaukee matter, and I want to send a letter up there to put in the paper. We don't like to be confused with that breed of pups.

152 Nothing new in regard to the syndicate matter. You are probably fully as well posted as I am, if not better. If anything comes up I will advise you, and expect the same from you. I do not bother you with theories in regard to the matter. Your time and my time is valuable, and when anything tangible happens we will get together quicker than lightning, but I don't want you to think that lack of correspondence indicates lack of interest. On the contrary, I am sawing wood.

(Signed) D. G. CO.
J. R. MORRON.

153 EXHIBIT 13.

Pfister & Vogel Leather Company letter-head.

MILWAUKEE, WIS., *July 7th*, 1899.

Mr. J. R. Morron, Chicago, Ill.

DEAR SIR: Your favor of the 5th received and contents duly noted. I met Mr. Harden at the works yesterday, and he appeared pleased with what he saw and no doubt will make you a full report, the gist of which I would like to hear. I am sadly disappointed at the slowness of our getting under way, and if I have occasion to build another glue factory it won't take 12 months to do it. Darlington has been hinting to Kimball that our glue stock was in a bad way, and it was doubtful whether it would be accepted. How much there is to this I am unable to judge, but it may be all a game to try and squeeze us if combine goes through. We have worked on the theory of late that — matter would not come to a

head this time, and are doing exactly as we would if no trust would be formed. I did not see the article you refer to, and hardly believe it worth while to reply. We will soon be ready to make glue, and, while we have been slow in getting ready, think we will have a good plant and one that will make us money.

I hope Mr. Freshman will come back to work thoroughly recuperated and full of vim to help push U. S. G. Co. to the front. I have heard yesterday Steinfeld had bought considerable glue stock in Canada and that Darlington had a message to come on East, which I understand he declined to do unless the money was at hand. Cody has closed the hair deal in Lynn and is still on the fence in Newark, as Steinfeld has not obtained consent of Newark tanners. I will be gone until Wednesday next, and will be pleased to hear from you occasionally.

I remain, yours truly,

(Signed) FRED VOGEL, JR.

154 EXHIBIT 14.

United States Glue Co. letter-head.

MILWAUKEE, WIS., *July 6th*, 1899.

Diamond Glue Co., Chicago, Ill.

GENTLEMEN: Will you kindly send us the names of firms you purchase the following goods from and state prices you pay in quantities stated:

10 gall. formaldehyde.
25 carboys sulphuric acid.
20 bbls. French oxide of zinc (imp. green seal zinc).
1 car sulphur.

Kindly let us hear from you as soon as convenient.

Yours truly,

(Signed) UNITED STATES GLUE CO.
FRED VOGEL, JR.

EXHIBIT 15.

Diamond Glue Co. letter-head.

CHICAGO, 7, 7, '99.

U. S. Glue Co., Milwaukee, Wis.

GENTLEMEN: Answering Mr. Vogel's letter of July 6th, the place we buy formald*y*hide is from Roessler & Hasslocher, #4 North Clark St., Chicago, and they charge us 21c. per lb. for it. We think it might be bought for less money in larger quantity. In regard to the sulphuric acid, we buy that from Chappel Chemical Company, Chicago. Now, if you buy it in carboys it will cost you about $30 per ton, but if you buy it in bulk in the tank car you can get it for about $8 per ton. The French oxide of zinc (imp. green seal zinc) we buy from Devoe & Raynolds. The price we have been paying is about 8½c. in small quantity. In regard to sulphur, we buy that

from A. S. Malcolmson, # 5 Hanover St., New York city, and I think we pay about $22 per ton f. o. b. New York city. They might be able to shade these prices in quantity or by buying together. If so, let us know, and if we can give you any other information also advise us.

Mr. Harden has just returned. He called me up and says you will not be able to run for 10 days or so, owing to the electricians not having completed their work, and also a lack of water, which will be remedied within a short time. I have notified Mr. Harden to be in readiness to be up there as soon as the factory is about to run, so as to be of any assistance he can.

Yours very truly,

(Signed) DIAMOND GLUE CO.
J. R. MORRON, *Manager.*

155 EXHIBIT 16.

United States Glue Co. letter-head.

MILWAUKEE, WIS., *July 12th*, 1899.

Diamond Glue Co., Chicago, Ill.

GENTLEMEN: Kindly advise us the rate of insurance you are paying on your plant in Chicago and elsewhere. Your prompt attention will oblige,

Yours truly,

(Signed) UNITED STATES GLUE CO.
FRED VOGEL, JR.

Ins. authorities here made rate of 1.75; we figured on one per cent.

EXHIBIT 17.

Pfister & Vogel Leather Co. letter-head.

MILWAUKEE, WIS., *Aug. 5*, 1899.

Diamond Glue Co., Chicago.

GENTLEMEN: As per telephone conversation had with Mr. Morron on Friday, we herewith enclose letters of Walburn-Swenson Co. regarding the difficulty we are having with the vacu-m pan erected by them at our glue works. Mr. Moorhead insists that the machine is too low; there ought to have been another section, so as to not give the glue liquors chance to be carried off with the condensation waters. Mr. Morris, of the Walburn-Swenson Co., who came here to examine the machine, told Mr. Moorhead that our machine had more pipes than the machines put in at Armour's factories. You will notice that Walburn-Swenson Co. contradict this fact in their letter, but claim that the fault is not with their machine, but owing to the age and condition of our raw glue material. Mr. Moorhead denies this and says he had no better result when boiling fresh material. We are not competent to decide as to who is correct in this controversy, but we are aware that here is a $300,000 plant

practically ready to go into operation, laying idle because this important part of the mechanical devices is not working satisfactorily. We must utilize every day and as early as it is possible get to work, for expenses are making great inroads into our capital, and we look to you as the practical man to give us early relief. We would very much like to have Mr. Freshman come up here and go over the entire plant and see what is necessary to be done in order to get in operation as soon as possible. We remain,

Respectfully yours,

(Signed) UNITED STATES GLUE CO.
FRED VOGEL, JR.

156 Walburn-Swenson Company letter-head.

CHICAGO, *August* 3, 1899.

Mr. Fred Vogel, Jr., Milwaukee, Wis.

DEAR SIR: We have your letter of the 2nd, enclosing copy of analysis of condenser water.

Our Mr. Morris reported here yesterday after having spent Tuesday at your glue-house. He reports that the evaporator is working nicely, and that there is little or no foam in the second effect, but that there is visible a mist or fog. We have never before had an occurrence of this kind in any of our evaporators, as heretofore entrainment of glue has been due to the liquor foaming and boiling over, but this does not occur in your machine, and the action of the liquor in producing the mist leads us to conclude that your stock has suffered considerable deterioration before being worked up, or else that there is something wrong in your method of working up the stock.

If we are correctly informed, the stock you are now working has been on hand in the lime for months, and the fact that your thin liquor shows so little density when tested with a hydrometer may account for the small yield of glue.

Your double effect is exactly like the one in Armour's glue works here where they evaporate 90,000 gallons of liquor every day, and is also the same as the machine we recently installed for them at South Omaha, and as they have never had any difficulty with entrainment, we do not see why your machine can be the cause of the trouble.

The analysis which you made of condenser water looks like quite a loss, but the steam condensed in the condenser is so diluted that it is impossible to make a reliable estimate, and, moreover, the water supplied to the condenser may contain large amounts of solids that would be precipitated in testing for glue.

We, of course, have had very little experience in the preparation of glue stock, but we have so many of our machines of like construction working satisfactorily that we are fully confident the trouble will not be found in the evaporator, and we are equally confident that when you have disposed of all your old material and begin on fresh stock you will have no more trouble.

If we can give you any farther information or assistance, we shall

be glad to hear from you, and would like to know the result of your farther investigations.

Yours very truly,

(Signed) WALBURN-SWENSON CO.
J. H. GIBSON.

Dictated.
J. H. G.

157 Walburn-Swenson Company letter-head.

CHICAGO, *July* 29, 1899.

United States Glue Co., Milwaukee, Wis.

GENTLEMEN: We have your letter of July 28, and note what you say about entrainment in the last effect. This peculiar action of your glue liquor is something new to us, as we have never before heard a complaint of this character. We are inclined to think that if you examine the matter carefully you will find it is only water that is dripping down from your vapor pipe. You understand, of course, that the atmosphere is a greal deal lower in temperature than the vapor in the vapor pipe, and necessarily some of the vapor is condensed and will drip down from the vapor pipe, and we believe that this is nothing more than condensed vapor or water.

In order to determine whether there is any entrainment you should chemically test the water coming from your condenser, and if there is any trace of glue in it you will be able to determine it easily. Please do this and let us hear farther from you.

Yours very truly,

(Signed) WALBURN-SWENSON CO.
J. H. GIBSON.

Dictated.
J. H. G.

P. S.—Since writing above have heard from Mr. Vogel by 'phone and will send our Mr. Morris to look into this matter on Monday.

158 EXHIBIT 18.

United States Glue Company letter-head.

MILWAUKEE, WIS., *Sept. 2nd*, 1899.

Diamond Glue Co., Chicago, Ill.

GENTLEMEN: Will you please send us about a yard of the glue netting you are using for glue frames to dry gelatine glue? We wish to have parties here give us figures on the netting.

We understand you have a hide-cutter for sale at one of your plants, and would be pleased to hear from you at what price this machine can be bought.

(Signed) UNITED STATES GLUE CO.,
Per C. P. BOSSERT, *M. E.*

EXHIBIT 19.

United States Glue Co. letter-head.

MILWAUKEE, WIS., *Sept.* 18, 1899.

Diamond Glue Co., 218 La Salle St., Chicago.

GENTLEMEN: Kindly put us in communication with some coopers in Chicago who make glue barrels. We are having a considerable amount of trouble in getting quotations on the sized barrels you wish us to use. We believe you pay 50c. for the same barrel down there.

Yours truly,
(Signed) UNITED STATES GLUE CO.
H.

EXHIBIT 20.

United States Glue Company letter-head.

MILWAUKEE, WIS., *Sept.* 21*st*, 1899.

Diamond Glue Co., 218 La Salle St., Chicago.

GENTLEMEN: Please give us the address of party you purchased press-cloths from and state price paid.

Have forwarded sample to the Rockwell Mfg. Co. as per your request.

Yours truly,
(Signed) UNITED STATES GLUE CO.
HANSEN.

159 EXHIBIT 21.

Diamond Glue Company letter-head.

9, 28, '99.

Mr. F. Vogel, c/o U. S. Glue Co., Milwaukee, Wis.

MY DEAR MR. VOGEL: Mr. Freshman on his return talked over with me the matters that you and he had under controversy when he was there last. Some one is evidently trying to cause dissatisfaction and make trouble for us both. The statements that have been brought to your ears are untrue, and no doubt Mr. Freshman told you the real state of affairs on each particular matter, and I simply write this letter to say to you that if at any time you get rumors of any kind we want you to continue to talk them over with us and ask us if they are so, and let us give you our explanation, because if you do not they will keep working on you, and we will not get together as closely as though we talked all matters of this kind over together. We figure that it is practically one concern in the sense of mutual interest.

And now in regard to the disposition of the glue: We are going to work and do our utmost to dispose of this glue in the best possible

channels, and if any one in the country can sell this glue we can. If conditions are such that the glue cannot be moved, why of course we cannot do the impossible, but we are going to put all the energy and ability we have into making that factory a success. As written you long ago, I do not think the factory will show much profit, if any, owing to the prices of raw material, but I can say to you earnestly and honestly that the manufacturing end and the selling department of that concern will show up creditably against any in the country at the end of a year or a year and a half. Furthermore, if at any time you find any one that has channels that are better than ours for placing glue, you will not in the slightest degree hurt our feelings, but, on the contrary, will be favoring us by giving us information that will enable us to dispose of the product, either directly or through the people who give you the information, if the same can be done so that our mutual interests are benefitted, and if at any time any one says to you that they think they could do better than we are doing let us know at once, and let us see if you cannot help us in adopting the methods they mention.

Yours very truly,

(Signed) J. R. MORRON.

160 EXHIBIT 22.

United States Glue Company letter-head.

MILWAUKEE, WIS., *Oct.* 14, 1899.

Diamond Glue Co., Chicago, Ill.

GENTLEMEN: The writer in comparing notes as to the sales that you have effected in glue and the amount of glue manufactured finds there is such a wide difference that he looks into the future with apprehension as to whether the business can be run with the capital we have now employed, either borrowed or paid in. We have today borrowed as much money as we should be required to to run this business. At any rate we have as much money invested as we were made to believe would amply suffice to run the glue plant on. The sales of glue thus far effected, compared with the amount manufactured, are so disappointing that we cannot help but feel alarmed. The estimates you have given us so far have in no way been borne out by the facts that are now existing.

As we have remarked above, we have got to the limit of the money we should be expected to borrow to run this business, and that we now depend entirely upon your efforts to effect sales that we may get accounts receivable on which to depend for the further payments of the raw material and manufacturing expenses.

We have manufactured approximately 320,000 lbs. of glue, of which 94,000 lbs. have been sold. There is such a wide difference between the amount manufactured and sold that our minds are filled with forebodings as to the future.

The writer would call your attention to the fact that the yields are such as would not even warrant us a profit if we bought the raw

material on a basis lower than existed last year, selling prices you are obtaining today considered.

Very truly yours,

(Signed) UNITED STATES GLUE CO.,
Per ALBERT TROSTEL, *V. Pres't*

161 EXHIBIT 23.

Holland House letter-head.

OCT. 18, 1899.

United States Glue Co., Milwaukee, Wis.

DEAR SIRS: Your letter of the 14th to the Diamond Glue Company, signed by your vice-president, Mr. Trostel, has been forwarded to me here at New York, and although I understand from a letter that accompanies it that Mr. Freshman has an appointment with you, at the same time I think letters of this kind should be answered so that our ideas may be on record with yours. I cannot say without looking at the sales as to just the number of lbs. we have sold, nor can I state without looking the matter up just how much glue has been turned out at Milwaukee, but we want to say this to you—that we are doing our utmost to sell your product and to place it intelligently and so that results will follow. If you desire to make it a question of seeing how quickly we can dispose of it, we will be very glad to work on these lines, but of course sacrifices will have to be made in order to distribute the production that way.

If you will look over your particular department, you will find that during the past year things have not turned out exactly as you thought they would. You had every reason to suppose that your plant would be finished long before it was, but contingencies over which you have no control caused the delay. Just so in the selling department, and while I have no doubt in my own mind that the selling department of this company will be well managed and that the sales will be satisfactory in a reasonable time to all concerned, still it would be useless for us to say that we could move the glue just as we want to without sacrifice. I sincerely hope you will have enough confidence in us to allow us to spend all of our time trying to dispose of your glue rather than spending part of it trying to have things run smoothly with our factors. A good deal of pressure will be brought to bear upon you to try and show that we are not selling fast enough or well enough. We have no time to spend with arguments of that kind. Any time you know of any way that the goods can be handled to better advantage, if you will let us know we will all get together, and no doubt arrangements can be made that will be satisfactory to all parties concerned.

We will continue to handle this business as though it were our own, giving it the benefit of every ability that we have. The only promises we will make are those that we have made before—that we feel we are in the position to do as well by you, if not better, than any one else, and that if the business is run on business lines

that we have every confidence in its showing a reasonable profit, either directly or indirectly.

With kind regards,

Yours very truly,

(Signed) J. R. MORRON, *Vice-Pres't.*

162 EXHIBIT 24.

Diamond Glue Company letter-head.

10, 27, 1899.

Mr. Fred Vogel, c/o U. S. Glue Co., Milwaukee, Wis.

DEAR SIR: I have just finished looking over all the samples of glue on hand, and, owing to troubles that we have had and the condition of the stock, etc., a good deal of it is very dark and off. There is one lot of glue that I picked out this morning that I want to try to sell to the Diamond Match Co. They buy a good many car-loads of glue, and I want to try and work in some of these lots. They have been accustomed to buy one grade of glue from us and are very particular in regard to the matter, and if they knew that we had changed the production they would immediately criticise the glue; therefore, on this sample lot, I want to ship it to them as from ourselves. I want the glue billed to the Diamond Glue Co., Chicago, for which we will send you a check, the price being 11¾c. here. The price we get for this glue is 11½c., delivered in Oswego, N. Y., but I am naming the other price to you because it is the price we expect to get from them on any new arrangement, but we are willing to stand the difference on this test. We wanted to write you a letter explaining why we wanted the glue billed to the Diamond Glue Co. direct instead of the shipper in this case.

If this glue proves satisfactory, then I can use as an argument that it does not make any difference whether it comes from Milwaukee or not. It is a low-testing glue, and I am in hopes will do their work, as they do not require a great adhesive quality, but other peculiarities; therefore we will send a regular order up to the U. S. Glue Co. to ship us this glue, and tender this explanation to you by this letter.

I will leave here at eleven o'clock Monday and will be in Milwaukee about one o'clock and will meet you at the Pfister hotel.

(Signed) DIAMOND GLUE COMPANY.
J. R. MORRON, *Manager.*

163 EXHIBIT 24*a*.

Copy.

Diamond Glue Company letter-head.

10, 27, '99.

United States Glue Co., Milwaukee, Wis.

GENTLEMEN: We herewith inclose order # 82, Martin Dawson Co., Chicago, Ill., for one barrel gelatine, lot # 29.

Order # 83, Diamond Glue Co., Chicago, Ill., eighteen barrels, lot # 38.

We also wish you would ship by express to the Diamond Glue Co., room 309 # 101 Beekman St., New York, N. Y., two pounds each of lot 28¾ and 31½.

(Signed) DIAMOND GLUE COMPANY.
ARNOLD FRESHMAN, *Sec'y-Treas.*

164 EXHIBIT 25.

United States Glue Company letter-head.

MILWAUKEE, WIS., *Oct.* 28, 1899.

Mr. J. R. Morron, gen'l manager Diamond Glue Co., Chicago, Ill.

DEAR SIR: I have your favors of the 27th inst. and in reply thereto beg to say that we do not feel inclined to follow your advice, both as to the purchase of Cudahy pigs' feet nor the sale of glue to the Diamond Match Co. at 11¾c., and I want to give notice that sales of our goods so much below their actual cost and below market price will not be permitted, and that we will expect you to place our goods at prices that will at least not ruin us in the first year. With the prices Swift is starting the new season of 1900 and 1¼c. offered for pigs' feet, cheap glue will be impossible, and we prefer to hold our stock for fair prices sooner than sell to Diamond Match or Glue Co. I wish you would defer your visit until Monday evening, and if agreeable I will meet you at the hotel at 8 p. m.

I remain, yours truly,
(Signed) FRED VOGEL, JR.

165 EXHIBIT 26.

Diamond Glue Company letter-head.

NOV. 3.

Fred Vogel, Jr., president United States Glue Co., Milwaukee, Wis.

DEAR SIR: Referring to the conversation that you had with the writer in our office a few days ago, in which you asked us to make you a proposition in regard to releasing you from the contract entered into between the United States Glue Company and the Diamond Glue Company under date of June 25th, 1898. Since seeing you I have given this matter a great deal of thought and have talked the matter over thoroughly with my associates, Mr. Spiegel and Mr. Freshman, and we lay the following facts before you, not in the form of a proposition altogether from a business standpoint, because from a business standpoint, as we both know, we have fulfilled our contract with you to the very best of our ability and have in no way violated its terms.

In asking me to make you a proposition as to what we would do in making terms to nullify this agreement, it is evident that you do this believing that you could make more advantageous arrangements with some one else, and our disposition, therefore, would be not to stand in your way in making what you consider to be more profitable connections. At the same time you must take into con-

sideration what this means to the Diamond Glue Company, and in making your arrangements with other parties no doubt they would be more than willing to assume any costs of release that we might make upon you. This they should do from a standpoint of equity.

Since June 25th, 1898, when we made this contract with you, it has necessarily, both because of the conditions agreed upon and because of its general effect upon our business, necessitated very great changes in plans, operation, and organization of our factories and forces. We were obliged to take our Chicago factory, which hitherto had manufactured hide and calf glues at a decided profit, and, with a considerable outlay of money, equip it for an entirely different output, expecting to draw upon the Milwaukee factory for the kind of glue heretofore manufactured at that plant. Therefore we did not bid on contracts for glue stock to run this factory, and the same went to other manufacturers, to our immediate loss and prospective gain. Again, our factory at Madison, Ind., we were obliged to shut down entirely, and not a wheel has turned in the manufacture of glue there. It is unnecessary for us to state the loss in this connection, also being left without the raw material with which to operate if we so desired at this time. Not a great while ago an output of a factory for hide glue that we had long wanted was made to us, and in order that we might devote our attention more particularly to your product we turned the proposition down, although it was profitable, and it was accepted by our competitors; therefore in naming the figures that we do to you it would be impossible for us to give you an idea of the indirect loss of the release of the product of the U. S. Glue Company's plant. As merchants you will very easily see our position in this respect.

Should our arrangement continue in force, in order to make
166 the factory profitable it is well known to us both that you would manufacture at least 10,000 # of glue per day, or 3,000,000 # per year. Figuring a very low selling price on this glue of all grades at 12c. per lb. would amount in dollars and cents to $360,000 per annum. Figuring your sales of grease at $40,000 per year would make a total of $400,000 per annum, on which we, as selling agents, would receive 10% commission, or $40,000 per year on the unexpired term of the contract in question.

At the time you made your agreement with us another concern made you a proposition to handle your product for 7½%. You will remember mentioning this to me again in the office a day or two ago. This concern, or any other that would approach you now, would be willing to take your product for a less figure than at that time, because your plant is now in active operation and represents a great deal of work and thought that they would have had to put into this project had they started with you in its infancy. It would be, therefore, we think, a very meager consideration, more than fair, you must acknowledge, on our part to ask in consideration of the release the difference between what you could have the product handled for today and our original proposition, together with compensation for actual time and costs pertaining to the building of the plant.

Two and one-half per cent. on $400,000 would amount to $10,000 per annum for the unexpired portion of the term, or if you would prefer to allow us to continue under the same arrangement on grease, might be arranged for a less amount. I would be unable at this time to give you the correct figures in regard to the time, labor, and costs, and direct outlay of money that we have made, but the figure we would submit would be fair.

You spoke to me in regard to cleaning the matter up at once. I suppose this could be arranged by discount. The figures I have submitted to you, as you will see yourself, do not in any way cover our indirect losses as mentioned in the first part of this letter. We would also ask you to protect us on any contracts or obligations that may arise from the shipment of sample barrels of your glue, which in a great many cases we have submitted as a basis for contract. As we are totally out of this grade of glue because of this arrangement, we would naturally have to be protected on the amounts that might be ordered by consumers whose sample barrels have gone out to date.

You cannot help but agree with us that our proposition, when you analyze it, is more than fair. I have not tried to make any fictitious claims; I mention the above as my ideas from a standpoint entirely personal, endeavoring to make a proposition that will be absolutely fair to you, and that will in part remunerate the Diamond Glue Company for what it has done and for what it would have reaped. I am more than anxious that the United States Glue Company be a success, and if conducted on a sound basis it will be.

Yours very truly,
(Signed) J. R. MORRON.

I write this so that you may consider our ideas, and I will see you on one of the days agreed upon.

167 EXHIBIT 26*a*.

United States Glue Company letter-head.

MILWAUKEE, WIS., *Nov.* 15, 1899.

Diamond Glue Co., Chicago, Ill.

GENTLEMEN: We beg to acknowledge receipt of your favor, without date, signed by Mr. Morron, the reply to which has been delayed, owing to the absence of two of our directors.

I am at this date unable to give you a reply to your letter, but will do so as soon as we can have a full meeting of the board.

We remain,
(Signed) UNITED STATES GLUE CO.
FRED VOGEL, JR., *Pres.*

EXHIBIT 26*a*.

Diamond Glue Company letter-head.

11, 16, '99.

United States Glue Co., Milwaukee, Wis.

GENTLEMEN: We herewith inclose order # 118, D. H. Fritts & Co., for two barrels of moulding glue, lot # 51. Please note that same is to be shipped to us for delivery. The terms on this order are, net, ninety days, less 3 % if paid between the 1st and 5th of the month following shipment.

Order # 119, Wm. Paterson & Sons Co., one barrel gelatine, lot 24.

Order # 120, North & Judd Mfg. Co., one barrel flake, lot 43.

(Signed) DIAMOND GLUE COMPANY.
ARNOLD FRESHMAN,
Sec'y & Treas.

168 EXHIBIT 27.

Copy.

Diamond Glue Company letter-head.

11, 16, '99.

United States Glue Co., Mr. Fred Vogel, president, Milwaukee, Wis.

GENTLEMEN: Yours of the 15th is noted, and we will await hearing from you in regard to the matter referred to in my letter, which should have been dated Nov. 3rd. I think the matter should be taken up at once, as it is unnecessary for me to explain our position to you in regard to the matter of distribution. You have stated that you could make arrangements that will be more advantageous than our contract, and you can readily see that it will be very embarrassing for us to send in orders now to various concerns and then have to write them in a short time that some one else will supply them with the same grade of glue. We would be very glad to relieve that stock. We will buy 100,000 to 200,000 # of off lots from you, so as to bill it ourselves, and thus avoid being put in the position above mentioned, if you so desire.

(Signed) DIAMOND GLUE COMPANY.
J. R. MORRON, *Manager.*

169 EXHIBIT 28.

United States Glue Company letter-head.

MILWAUKEE, WIS., *Nov.* 18, 1899.

Diamond Glue Co., Chicago, Ill.

GENTLEMEN: Your favor of the 16th inst. received, and I am as anxious as you are to get to some final decision, and we will do so as soon as we can get the quorum of the board of directors.

I want to correct your statement which you make that I stated I could make arrangements that would be more advantageous than

our contract. What I told you was that before entering into contract with you we could have made an arrangement at a lower rate of commission than we pay you.

We note your position as to sales of glue, but we do believe that it is fair that as long as you keep selling our grease you certainly ought to keep selling our glue at prices that will not net us a loss.

If you prefer to buy off lots of glue, you will please make us your best net cash offer at the factory for the lot that you want to buy and we will give it a prompt consideration.

(Signed) UNITED STATES GLUE CO.
FRED VOGEL, JR., *Pres't.*

170 EXHIBIT 28*a*.

Diamond Glue Company letter-head.

11, 20, '99.

United States Glue Co., Fred Vogel, Jr., president, Milwaukee, Wis.

GENTLEMEN: Your letter of the 18th noted. When we talked over the matter of transferring the contract you will remember that you stated to me that your reason for transferring the same was that you could make better arrangements, and, of course, that would be your only reason for changing the contract. In regard to the selling of the grease, that we do very readily, as it is a commodity that sells in a different way than glue, and by selling grease to brokers or users we do not make ourselves competitors with the output of your factory at a future date, while on glue we do. We inclose you an order herewith for about 375 barrels of glue, which we will be willing to take in order to reduce that stock, the United States Glue Co. to sell this glue to the Diamond Glue Co. at 12½c. per lb. here all around, regular terms, and, of course, we are to receive the same commission on this as though it had been sold to any one else. I want to say to you that in paying this price for this quantity of glue we are doing it simply to reduce that stock, and the figures named are full market price. We will take the glue in ground form, so that we can mix it and make somewhat of a decent average of it, and take it in shipments, half within thirty days and half within sixty days.

Awaiting your reply, we remain,

(Signed) DIAMOND GLUE COMPANY.
J. R. MORRON, *Manager.*

P. S.—Will take it all in at once, if more convenient to you.

171 EXHIBIT 29.

United States Glue Company letter-head.

MILWAUKEE, WIS., *Nov. 20th*, 1899.

Diamond Glue Co., Chicago, Ill.

GENTLEMEN: Referring to your letter of Nov. 3rd, signed by your Mr. Morron, and referring to conversation had between the writer and Mr. Morron in regard to the termination of the contract entered into by you and this company, will say:

That this letter was received during the absence of the majority of the board of directors; therefore an answer has been unavoidably delayed.

We desire to repel most emphatically your suggestion that we are endeavoring to bring about a cancellation of this agreement in order to enter into arrangements more profitable or more beneficial to ourselves. We have no such agreement in view, although, of course, if we are to continue to manufacture, and our relations with you are terminated, we shall be obliged to make new arrangements, not necessarily new connections, in order to put goods upon the market.

As the writer advised you, it was our desire to amicably terminate the relations which have existed between us, and to this end the suggestions were made to Mr. Morron by our Mr. Vogel, which are referred to in your letter. We still wish to accomplish this result, if possible; but we feel that you have given us sufficient reason for treating this contract as at an end.

Your agreement was to sell our product. So far you have been able to move only about 22% of the output. Your agreement in this regard was absolute. You now seem to consider that your obligation in this respect was conditioned on your ability to in-
172 troduce our goods, and your ability so far has extended only to 22% of the amount manufactured. Nor do you give us any positive assurance in this respect as to the future. You represented to us that our new factory, properly equipped, should produce glue at a manufacturing cost of 2½c. per pound. In the construction and equipment of this factory you had carte-blanche, and no expense was spared; yet with all of the appliances and equipment which you could suggest, the manufacturing cost is still over four and a quarter cents. With this expense, and with the prices which you have been able to obtain and those you indicated in your letter as probable in the future, our works have been and must continuously be run at a loss. There is, of course, nothing in our relations which requires the U. S. Glue Co. to operate its factory at a loss, and therefore, unless this difficulty is remedied, the works will have to cease manufacturing.

We can see, therefore, only the choice between the two courses indicated, either to shut down our plant or to end the contract with you. If this contract were still allowed to continue and the plant were to close down, you will see that no benefit will accrue to you

from the continuance of the contract; and, on the other hand, if we terminated the contract, you can establish no damages, for the reason that unless we continue to produce you get no benefit. There are other circumstances which lead us to believe that we have a right to treat this agreement as abandoned, but we have mentioned the foregoing as being alone sufficient.

Hoping that you will see the matter in the light in which it is represented, and that you will appreciate the fact that we cannot go on making a daily loss, and also hoping that an amicable adjustment may be speedily reached, we remain,

(Signed) UNITED STATES GLUE CO.
FRED VOGEL, JR., *Pres't.*

173 EXHIBIT 30.

Diamond Glue Company letter-head.

11, 22, '99.

United States Glue Co., Milwaukee, Wis.

GENTLEMEN: Your letter of Nov. 20th, signed by your president, Mr. Fred Vogel, Jr., in answer to ours of Nov. 3rd. is noted, and the letter still leaves us in the dark as to our proposition which we made you under that date at your request.

Answering your letter, we wish to start out with the distinct understanding, as you have, that we desire to settle this matter amicably. When Mr. Vogel was in to see me some little time ago I asked him the direct question as to whether he was figuring on other arrangements then. He answered that he was, but that he would rather that I would not ask him any questions, as he was not in a position to answer them. It would be unnecessary for us to state that any new arrangements you make would be more advantageous, as of course you would not make any change unless the new arrangements were to be more advantageous than the old.

We are surprised to note that you think you have sufficient reason for cancelling our agreement, and we note the points that you make. We do not care to go into this matter extensively at this time, because, as stated above, we both desire to settle the matter amicably, and therefore a controversy on these lines would not be altogether necessary. There is one point that you make, however, in regard to the interpretation of our contract, in which we differ with you, and will draw attention to this part of your letter, viz., that in our contract we absolutely agree to sell your product. This statement of yours, of course, is brought about by the following clause in our contract, dated June 25th, 1898: "It is further agreed that party of the second part shall control, handle and sell the entire output including glue and bi-products of said factory." Now, the real meaning of this is that we are to be the exclusive selling agents of the factory. We certainly make no money unless the product is sold, but had it meant that we guarantee the sale of the glue as soon as it was turned out, or at any specified time, I think the contract would so have stated. In making your statement that we absolutely

agree to sell the entire output you have taken from the clause above quoted only one part of it. If you construe that sentence to mean that we agree to sell the product, then you must also take the rest of the sentence into consideration and figure that we also control the entire product; and if we interpret that literally as you do your part of it, it would mean that we could sell that product at any price, and you and we both know that if we choose to sacrifice that glue and offer it at a very low price that we would have no trouble in selling the entire output even before the glue was put on the nets to dry. Therefore I think it would be best for us both to interpret this clause in the way in which it was meant. We consider that we have filled our agreement to the letter, and it is not because of any weakness on that score that we have agreed to do anything in our power to aid you in what you consider your best interests.

174 This matter is of a great deal of importance to you and to us, and it should be settled definitely. Will you not set a time at once that we can talk this matter over, and remember that we are willing to be fair? You cannot help but see this, and we hope that you feel the same way.

(Signed) DIAMOND GLUE COMPANY.
J. R. MORRON, *Manager*.

EXHIBIT 30*a*.

Diamond Glue Co. letter-head.

CHICAGO, 11, 24, '99.

Mr. Fred Vogel, pres. United States Glue Co., Milwaukee, Wis.

DEAR SIR: Referring to our offer to take some glue from you a day or so ago, it will be necessary for us to know whether you desire us to take this glue or not at once, so that we may regulate our supply elsewhere accordingly.

Will you please let us hear from you at once?

Yours very truly, DIAMOND GLUE CO.
(Signed) J. R. MORRON, *Manager*.

175 EXHIBIT 31.

United States Glue Co. letter-head.

MILWAUKEE, WIS., *Nov.* 25, 1899.

Diamond Glue Co., Chicago, Ill.

GENTLEMEN: Your favor of the 20th and 24th inst., offering to buy glue, received. We regret that the prices you offer are such that they would cause us a serious loss, and we therefore decline the offer.

As near as we can figure we are losing money at the prices you sold these grades of glue, and your offer is still lower, which would mean an additional loss of 12 to $1,300 on the lot.

We remain

Yours truly, UNITED STATES GLUE CO.
(Signed) FRED VOGEL, JR.

EXHIBIT 32.

Diamond Glue Co. letter-head.

CHICAGO, 11, 27, '99.

U. S. Glue Co., Milwaukee, Wis.

GENTLEMEN: Your letter of the 25th in regard to our offer on glue is noted. If you have looked into those glues, you will find that they are off lots principally, and that if you submit samples elsewhere and when you get right down to selling you would find that no one would pay you over that price. If your present negotiations do not mature and you care to dispose of the glue on the lines mentioned, we will be glad to take the matter up with you.

I have not received any answer to our letter asking for an appointment to talk over the matter of great importance to both.

Yours very truly, DIAMOND GLUE CO.
(Signed) J. R. MORRON, *Manager.*

176 EXHIBIT 32*a*.

Copy.

Diamond Glue Co. letter-head.

CHICAGO, 11, 27, '99.

United States Glue Co., Milwaukee, Wis.

GENTLEMEN: We herewith inclose you copy of contracts taken and deliveries of glue to be made: Chase-Hackley Piano Co., 100 to 125 bbls.; St. John's Table Co., five barrels monthly, beginning Jan. 1st, with the privilege of increasing to twelve barrels each or any month during the year; Banderob-Chase Co., 65 to 75 barrels, to be taken monthly shipments during 1900.

We herewith inclose order # 134, Martin Dawson Co., Chicago., for one barrel gelatine, lot 29.

Order # 135, Harshaw, Fuller & Goodwin Co., Cleveland, Ohio, one barrel ground glue, lot 48.

(Signed) DIAMOND GLUE COMPANY.
ARNOLD FRESHMAN,
Sec'y & Treas.

177 EXHIBIT 33.

MILWAUKEE, WIS., *Nov.* 28, 1899.

Diamond Glue Company, 218 La Salle St., Chicago, Ill.

GENTLEMEN: We have your favor of the 27th inst., enclosing contracts for future delivery of glue, which you seem to have assumed to make. We cannot recognize these contracts for future delivery for reasons that must readily occur to you and which appear in your letter of the 20th inst.

The termination of your arrangement for handling our product has been before us both, and we understood from your last letter

that you would abstain from selling our glue product for future delivery since it would make us your competitors in the future.

You will also remember that our Mr. Vogel notified you some days since by telephone, in talking with your Mr. Morron, that under the circumstances, while we had no objection to your selling glue for fair prices, we did not want to be tied down for future deliveries. We recognize and will fill the small orders enclosed with your last letter, viz., orders 134 and 135 to Martin Dawson and Harshaw, Fuller & Goodwin Company respectively.

We desire also to confirm the arrangement made with your Mr. Morron by telephone this day for a meeting on Friday next, Dec. 1st, at 2 p. m., here in Milwaukee.

Pending this interview with your Mr. Morron, we desire you to cease the sale of our product.

Yours truly, UNITED STATES GLUE CO.
(Signed) FRED VOGEL, JR.

178 EXHIBIT 34.

United States Glue Co. letter-head.

MILWAUKEE, WIS., *Dec. 2nd*, 1899.

Diamond Glue Co., Chicago, Ill.

GENTLEMEN: We have your two favors of the 1st inst., enclosing order for #141, #142, #143, #144. We are perfectly willing to fill these orders and allow you 10% for commission and guaranty of the payment on the amount thereof, and shall be pleased to receive orders from you and allow you a similar commission until further notice on such orders as seem to us proper to be filled. As we wrote you on the 28th ult. we wished you to desist from making any further sales as representing us and as we explicitly explained to your Mr. Morron yesterday that the agreement formerly existing between your company and the U. S. Glue Co. was at an end, we, of course, cannot recognize these orders or any orders as coming within or being governed by the agreement.

We remain,

Yours truly, UNITED STATES GLUE CO.
(Signed) FRED VOGEL, JR.

179 EXHIBIT 35.

MILWAUKEE, *Dec.* 4, 1899.

Diamond Glue Co., Chicago, Ill.

GENTLEMEN: After our conversation with your Mr. Morron on Friday last we endeavored to draw a new contract covering a portion of the subject-matter of the old contract, which has been terminated and abandoned, but inasmuch as Mr. Morron informed us that you would accept no contract containing any guaranty of substantial performance on your part we found it impossible to draft a contract which would be at all fair to us. We do not see, therefore,

how we can renew our relations in such a way as to satisfy you and fully protect ourselves.

Inasmuch, however, as you dispute our right to treat the former agreement as at an end and indicate that you claim damages because of our refusal to longer recognize the former agreement, we desire to end all controversies between us, and although we claim full right in the law to treat the said agreement as abandoned and at an end and dispute any claim on your part to any damages whatever, and although we, on the other hand, claim damages against you for various breaches of the said contract, we will, for the sake of peace, as a compromise of all controversies on the subject and without prejudice, offer to you, as we did on Friday last through Mr. Quarles, the sum of $5,000.00 to settle and compromise the said disputes and controversies.

Yours truly, UNITED STATES GLUE CO.
(Signed) FRED VOGEL, JR.

180 EXHIBIT 36.

Diamond Glue Co. letter-head.

CHICAGO, 12, 5, '99.

United States Glue Co., Milwaukee, Wis.

GENTLEMEN: Your favors of the 2nd and 4th inst. received, in which you declare that you will no longer recognize our contract with you or carry out its agreements. This company denies your right to do this, and insists that you cannot thus arbitrarily terminate it merely because you desire more favorable terms than we both agreed to when the contract was made.

Before deciding what action to take with reference to your offer, we would like to know what you mean by your claim that we are guilty of "various breaches of the said contract." We have kept our agreement in good faith, and if we are to be deprived of its benefits we ought to be notified explicitly of the reasons for the action.

Yours very truly, DIAMOND GLUE CO.
(Signed) J. R. MORRON, *Manager.*

181 EXHIBIT 37.

MILWAUKEE, *Dec.* 7, 1899.

Diamond Glue Company, 218 La Salle St., Chicago, Ill.

GENTLEMEN: We are in receipt of your favor of the 5th inst. in regard to our refusal to further recognize the contract formerly subsisting between us.

You suggest, as you have suggested before, that our action is arbitrary and based simply on a desire to secure more favorable terms than were agreed upon when the contract was made. We again state to you, as we have before stated, that this action on our part is not arbitrary, nor is it based on any desire to secure more

favorable terms. Our action is, in our judgment, based on good and sufficient legal grounds, and, among other reasons, goes upon breaches of the contract by you and failure on your part to perform.

As to the second request contained in your letter, we are of the opinion that it will do no good to argue the question. You state that you have kept your agreement in good faith, but this statement can be accurate only on the theory, which you seem to adopt, that the contract imposes no obligation whatever upon you.

We must, with all due respect, decline to enter into a controversy by correspondence.

Yours truly, UNITED STATES GLUE CO.
(Signed) ALBERT A. TROSTEL, *Vice-Pres.*

182 EXHIBIT 38.

MILWAUKEE, *Dec.* 7, 1899.

Diamond Glue Co., 218 La Salle St., Chicago, Ill.

GENTLEMEN: We have your favor of the 5th inst., with statement of commission account.

We are inclined to pay the amount of net commissions, being 10 % on the amount of sales, subject to the deductions which you mention, for the reason that you have assured us that this 10 % all goes as expense to you on making the sales; but in so doing we wish it distinctly understood that in so reimbursing you for your expenses we are not waiving any of our claims of damages against you for breaches of your contract.

We are inclined, therefore, as soon as we can check up this statement, to send you a check for the amount, but with the express understanding that this shall not be taken to waive any of our rights in the premises, but shall be without prejudice to our said claims, and will be merely treating this matter of commissions as a separate matter.

Yours truly, UNITED STATES GLUE CO.
(Signed) ALBERT A. TROSTEL, *Vice-Pres.*

183 EXHIBIT 39.

United States Glue Co. letter-head.

MILWAUKEE, WIS., *Dec. 18th*, 1899.

Diamond Glue Co., 218 La Salle St., Chicago, Ill.

GENTLEMEN: Enclosed please find our check for $1,545.29 to apply on commissions.

Kindly acknowledge receipt and oblige,

Yours truly,
(Signed) UNITED STATES GLUE CO.

184 EXHIBIT 40.

Return this to Diamond Glue Co.; general offices, 218 La Salle St., Chicago, Ill.
Order No. 137.
Date sold: 12, 1, '99.
Verified: ——. Salesman: Phila. Date billed: ——. Terms: Regular.
Sold to Wm. Ritter & Bros. Town and State: Philadelphia, Pa. Ship via ——.
Rating: ——. Register No. 144. Ledger folio —.

Shipper's check.	Quantity.	Grade.	Bbl. No.	Gross weight.	Tare.	Net weight.	Price.
25	1 bbl.	V. opaque glue.	472	268	36	232	13¾c., 31.90

185 EXHIBIT 41.

List of Shipments by United States Glue Co. on Sales by Diamond Glue Co.

Date. 1899.			Order No.
8, 25.	W. J. Gibson & Co., Chicago	2 cars grease .... 3¾c...	1
9, 4.	" " "	" " " .... " ..	"
9, 6.	Anti Kalsomine Co., Gd. Rapids	1 " V. glue... 12c....	2
9, 9.	Berkey & Gay Furn. Co., Gd. Rapids	10 bbls. V. glue .. 11¾c...	3
9, 15.	Stollenwerk & Weber, S. Milwaukee	1 " " " . 15c....	4
9, 26.	W. J. Gibson & Co., Chicago	1 car grease..... 3¾c...	5
9, 26.	Sligh Furn. Co., Gd. Rapids	1 bbl. V. glue.... 12½c...	6
9, 29.	Stuyvesant Glue Co., St. Louis	1 " " " ... 13.60..	7
"	" "	1 " " " ... 12.80..	"
"	" "	1 " " " ... 12c....	"
"	" "	1 " " " ... 11.20..	"
"	" "	1 " " " ... 10.40..	"
"	" "	1 " " " ... 9.60..	"
"	Dillingham Mfg. Co., Sheboygan	1 " " " ... 12½c...	8
"	Starr Piano Co., Richmond, Ind.	1 " " " ... 13c....	9
"	" " "	1 " " " ... 12c....	"
"	Cochran Chair Co., Cochran, Ind	2 " " " ... 12½c...	10
9, 30.	Geo. R. Watson & Co., Chicago	2 " " gel..... 18c....	11
"	E. Goldman & Co., Chicago	1 " " " ..... 18c....	12
"	Oshkosh Furn. Co., Oshkosh, Wis.	25 lbs. " glue.... 13¾c...	13
"	" " "	25 " " " ... 13¾c...	"
"	" " "	25 " " " ... 12½c...	"
10, 3.	Trowbridge Piano Co. (Franklin, Mass.)	1 bbl. " " ... 15c....	14
"	Banderob-Chase Co., Oshkosh, Wis	1 " " " ... 13¾c...	15
"	" " "	1 " " " ... 12c....	"
"	Heywood Bros. & Wakefield, Chicago	5 " " " ... 12c....	16
"	Elkhart Carriage & Harness Mfg. Co., Elkhart.	1 " " " ... 13¾c...	17
"	Wells-Kreighbaum Mfg. Co., So. Bend, Ind.	1 " " " ... 12½c...	18
10, 5.	Albion Paper Co., Holyoke, Mass	1 " " " ... 13¾c...	19
"	The Graham Mfg. Co., Derby, Conn	1 " " " ... 15c....	20
"	Grand Rapids Piano Case Co., Gd. Rapids.	1 " " " ... 12½c...	21
10, 6.	Burr Bros., Guelph, Ont	2 " " " ... 13¾c...	22
"	P. Schock & Co., Minneapolis, Minn	1 " " " ... 13c....	23
"	Sargeant Mfg. Co., Muskegon, Mich	1 " " " ... 13¾c...	24
10, 7.	C. F. L'Hommedieu, Chicago	1 " " " ... 13¾c...	25
"	Richardson Piano Case Co., Leominster, Mass.	5 " " " ... 12½c...	26
"	Knechtel Furn. Co., Hanover, Ont	2 " " " ... 13¾c...	27

Exhibit 41—Continued.

Date. 1899.				Order No.
10, 7.	The Hill Chair Co., Wiarton, Ont	1 bbl.	V. glue	13½c	28
10, 9.	Hargreaves Mfg. Co., Detroit, Mich	1 "	" "	14c	29
10, 10.	W. J. Gibson & Co., Chicago	1 car	B. grease	3½c	30
"	Schroeder Paint & Glass Co, Detroit	1 bbl.	V. gel	18c	31
"	Wm. Reid & Co., Detroit	1 bbl.	V. gel	18c	32
"	Croft & Allen Co., Philadelphia	1 "	" "	18½c	33
"	Elmer E. Hart, Fitchburg, Mass	1 "	" "	18c	34
"	Jackson Knife & Shears Co., Fremont, O.	1 "	" glue	13¾c	3
10, 14.	The Matthews & Willard Mfg. Co., Waterbury, Conn.	1 "	" "	14c	3
186					
10, 16.	E. H. Jacobs Mfg. Co., Danielson, Conn	1 bbl.	V. gel	20c	37
10, 13.	Quaker City Chocolate & Confectionery Co., Phila.	1 "	" "	18½c	38
"	Ritter Bros., Philadelphia	1 "	" glue	13½c	39
10, 14.	J. W. Clarks Sons, Philadelphia	1 "	" "	12½c	40
"	Sieling Furn. Co., Walkerton, Ont	1 "	" "	13½c	41
10, 14.	S. Hadley Lum. Co., Chatham, Ont	1 "	" "	13½c	42
10, 12.	J. W. Gibson & Co., Chicago	1 car	B. grease	3½c	43
10, 13.	Cleveland Window Glass Co., Cleveland, O.	1 bbl.	V. glue	13c	44
10, 13.	Detroit Cabinet Co., Detroit, Mich	1 "	" "	13½c	45
"	Grand Rapids Refrg. Co., Grand Rapids, Mich.	2 "	" "	12½c	46
10, 14.	Heywood Bros. & Wakefield Co., Chicago.	5 "	" "	12c	47
10, 16.	Chase-Hackley Piano Co., Muskegon, Mich.	1 "	" "	12½c	48
10, 14.	Greek-American Conf., New York	10 "	" gel	19½c	49
10, 17.	John Widdicomb Co., Gd. Rapids	1 "	" glue	13½c	50
"	Ontario Wheel Co., Ltd., Gananoque, Ont.	1 "	" "	13½c	51
"	Canada Carriage Co., Brockville, Ont	1 "	" "	13½c	52
10, 19.	F. G. Smith, Leominster, Mass	2 "	" "	12½c	53
"	E. C. Stearns & Co., Syracuse, N. Y	1 "	" "	13½c	54
"	Whitney & Co., Leominster, Mass	1 "	" "	14½c	55
"	American Supply Co., Providence, R. I	1 "	" gel	18c	56
"	" " " "	1 "	" glue	16½c	56
10, 20.	Fuller & Hutsinpiller Co., Galapolis, Ohio.	1 "	" "	13½c	57
10, 21.	Dominion Licorice & Novelty Co., Toronto, Ont.	200 lbs.	V. gel	19c	58
10, 20.	James M. Aird, Montreal, Que	100 "	" "	18c	59
10, 21.	Wait Furn. Co., Portsmouth, O	2 bbls.	V. glue	13½c	60
10, 20.	Rockford Palace Furn. Co., Rockford, Ill.	1 "	" "	12½c	61
10, 20.	Rockford Standard Furn. Co., Rockford, Ill.	1 "	" "	12½c	62
"	East Rockford Mantel Co., Rockford, Ill.	1 "	" "	12½c	63
"	Forest City Furn. Co., Rockford, Ill	1 "	" "	12½c	64
"	Central Furn. Co., Rockford, Ill	1 "	" "	12½c	65
"	Royal Mantel & Furn. Co., Rockford, Ill.	1 "	" "	12½c	66
"	Scandia Furn. Co., Rockford, Ill.	1 "	" "	12½c	67
"	Rockford Frame & Fix. Co., Rockford, Ill.	1 "	" "	12½c	68
10, 21.	J. G. Phinney Counter Co., Stoughton, Mass.	1 "	" "	13½c	69
"	John G. Jewett Mfg. Co., Buffalo, N. Y.	1 "	" "	13½c	70
"	Liberty Wall Paper Co., Schuylerville, N. Y.	96 "	" "	13½c	71
10, 25	Heywood Bros. & Wakefield Co., Chicago.	5 "	" "	12c	72
"	Wells-Kreighbaum Mfg.Co., So. Bend, Ind.	1 "	" "	12½c	73
187					
10, 26.	W. J. Gibson & Co., Chicago	1 car	B. grease	3½c	74
10, 27.	Bird Glue Co., Cincinnati, O.	1 bbl.	V. glue	13c	75
"	Dayton Lum. & Mfg. Co., Dayton.	2 "	" "	12½c	76
"	Washington Mfg. Co., Washington, N. J.	1 "	" "	13½c	77

Exhibit 41—Continued.

Date. 1899.							Order No.
10, 27.	Wm. McWilliams, Quebec, Can	1	bbl.	V.	glue	19c	78
"	C. H. Fletcher Conf. Co., Sherbrooke, Que.	100	lbs.	V.	gel	19c	79
10, 28.	Martin Dawson Co., Chicago	1	bbl.	"	"	19c	80
10, 27.	Thomas I. Putnam & Son, New York	1	"	"	"	20c	81
"	" " " "	5	lbs.	"	"	20c	"
10, 30.	Myers & Ervien Co., Ogontz, Pa	3	bbl.	"	glue	13c	82
"	Palmer Bros., Chester, Pa	1	"	"	"	12½c	83
10, 31.	Smith, Day & Co., Baldwinville, Mass	1	"	"	"	12½c	84
"	Whitney & Co., Leominster, Mass	5	"	"	"	14½c	85
"	Wm. A. Berkey Furn. Co., Grand Rapids, Mich.	4	"	Jt.	"	13¾c	86
"	Anti-Kalsomine Co., Gd. Rapids, Mich	1	"	V.	"	12c	87
"	Toronto Type Fdy. Co., Toronto	2	"	"	"	15c	88
11, 2.	Ohio Table Co., Massillon, O	1	"	"	"	14c	89
"	W. H. Buchanan & Co., Chicago	"	"	"	"	20c	90
11, 3.	W. J. Gibson & Co., Chicago	"	car	B.	grease	3¾c	91
11, 4.	Stone & Ware, Milwaukee	"	bbl.	V.	glue	12½c	92
"	A. Geo. Schulz & Co., Milwaukee	"	"	"	"	12c	93
11, 6.	Heywood Bros. & Wakefield Co., Chicago	5	"	"	"	12c	94
11, 7.	W. C. Edwards & Co., Ottawa, Ont	1	"	"	"	13¾c	95
"	Conrey & Birely Table Co., Shelbyville, Ind.	1	"	"	"	15c	96
"	Conrey & Birely Table Co., Shelbyville, Ind.	2	"	"	"	12½c	"
"	Rockford Frame & Fixture Co., Rockford, Ill.	1	"	"	"	12½c	97
"	C. Rogers & Bros., Meriden, Conn	1	"	"	"	14½c	98
11, 9.	Indiana Furniture Co., Connersville, Ind.	1	"	"	"	13¼c	99
"	New England Furniture Co., Grand Rapids, Mich.	2	"	"	"	12½c	100
"	John Widdicomb Co., Gd. Rapids	2	"	"	"	13¼c	101
"	Oshkosh Furniture Co., Oshkosh, Wis	1	"	"	"	13¾c	102
"	" " " "	1	"	"	"	13¾c	"
"	Gd. Rapids Refrigerator Co., Grd. Rapids, Mich.	2	"	"	"	12¾c	103
"	Frankfort Chair Co., New Haven, Conn	5	"	"	"	13½c	104
"	" " " "	5	"	"	"	13½c	"
"	Sargeant & Co., " "	2	"	"	"	14c	105
11, 10.	Joseph Orr, Stratford, Ont	1	"	noodle	glue	13½c	106
11, 11.	W. J. Gibson & Co., Chicago	1	car	lgt.	grease	3¾c	107
11, 14.	" " " "	1	"	B.	"	3¾c	108
"	H. A. Eames & Co., Philadelphia, Pa	25	bbl.	V.	gel	18½c	109
11, 13.	Crescent Furniture Co., Evansville, Ind.	1	"	"	glue	12½c	110
11, 16.	Geo. E. Watson & Co., Chicago	2	"	"	gel	19c	111
"	Crossen Car Co., Coburg, Ont	2	"	"	glue	12½c	112
"	Wells, Kreighbaum Mfg. Co., So. Bend, Ind.	1	"	"	"	12½c	113
"	Keasey Pulley Co., Toledo, O	1	"	"	"	12c	114
188–203							
11, 17.	Wm. Paterson & Sons Co., Brantford, Ont.	1	bbl.	V.	gel	19c	115
"	North & Judd Mfg. Co., New Britain, Conn.	1	"	"	glue	13½c	116
"	Heywood Bros. & Wakefield Co., Chicago, Ill.	5	"	"	"	12c	117
"	D. H. Fritts & Co., Chicago	2	"	"	mldg.	15c	118
11, 18.	Hargreaves Mfg. Co., Detroit, Mich	5	"	"	glue	14c	119
11, 22.	F. W. Thurston & Co., Chicago	22	"	"	gel	18c	120
"	" " " "	13	"	"	glue	12½c	"
"	Reardon Mfg. Co., St. Louis, Mo	5	"	"	"	12½c	121
"	" " " "	10	"	"	"	12½c	"
"	Wellington Piano Case Co., Leominster, Mass.	1	"	"	"	13c	122

Exhibit 41—Continued.

Date. 1899.								Order No.
11, 22.	Page Belting Co., Concord, N. H.	1	bbl.	V.	gel.	20c.		123
"	Impervious Package Co., Keene, N. H.	1	"	"	glue.	13½c.		124
"	" " " "	1	"	"	"	12½c.		"
"	Swink, Snyder & Co., Wapakoneta, O.	1	"	"	"	12½c.		125
11, 24.	Schauss Bros. Mfg. Co., Toledo, O.	1	"	"	"	13½c.		126
"	Detroit Cabinet Co., Detroit	1	"	"	"	13¾c.		127
11, 25.	Heywood Bros. & Wakefield Co., Chicago, Ill.	5	"	"	"	12c.		128
11, 24.	Fulton Pulley Co., Fulton, N. Y.	1	"	"	"	15c.		129
11, 27.	Heywood Bros. & Wakefield Co., Gardner, Mass.	1	"	"	"	13½c.		130
"	Heywood Bros. & Wakefield Co., Gardner, Mass.	1	"	"	"	12½c.		"
11, 28.	H. M. Hooker, Chicago	5	bbl.	V.	gel.	19c.		131
11, 29.	Martin Dawson Co., Chicago	1	"	"	"	19c.		132
"	Harshaw, Fuller & Goodwin, Cleveland, O.	1	"	"	glue.	14c.		133
"	D. H. Fritts & Co., Chicago	10	"	"	mldg.	15c.		134
"	E. S. Kuh, New York, N. Y.	2	cars		grease	3¾c.		135
12, 1.	Fulton Pulley Co., Fulton, N. Y.	4	casks		sht. glue.	15c.		136
12, 5.	Wm. Ritter & Bros., Philadelphia, Pa.	1	bbl.	V.	glue.	13½c.		137
"	W. H. Buchanan & Co., Chicago	1	"	"	gel.	20c.		138
"	The Plano Mfg. Co., W. Pullman	1	"	"	glue.	15c.		139
"	R. E. Jamieson, Ottawa, Ont.	100	"	"	gel.	19c.		140
12, 13.	W. J. Gibson & Co., Chicago	1	car		grease	3¾c.		141

* * * * * * *

204 EXHIBIT 43.

Copy.

Diamond Glue Company letter-head.

3, 30, '99.

Mr. Fred Vogel, Jr., c/o Pfister & Vogel Leather Co., Milwaukee, Wis.

DEAR SIR: Yours of the 29th noted. We are sorry that our desire to place matters fairly before the U. S. Glue Co. should have caused you any dissatisfaction, because that was farthest from our wishes. We say today, just as Mr. Freshman has told you before, that your stock is worth more than the other tanners', but we are paying you the top market, and we are paying the other tanners too much. That is what we mean. We do not mean that we are paying the other tanners a fair price and you too little.

If you will look around carefully and thoroughly and get quotations on the stock, I think you will find that the price the tanners are going to charge the U. S. Glue Co. will be more than any one else will buy the stock for. I wish you would let me know just what others bid you. It would be no more than fair for us to know this, as all you want is to get the same from the glue company as others will pay.

We want you to make all the money you can, and that is what we are in business for, but we have a decided pride in looking forward to the U. S. Glue Co. making some money as an institution instead of making the tanners money by a first process that will deprive the

company earnings that we think it is entitled to. As written you before, when that Milwaukee plant starts we expect to take the yields of the various stocks of the different tanners, and it will be at that time that your stock, we think, will show its increased value over the others.

I understood yesterday from reliable sources that the American and Untermyer have stopped figuring for the time. The only thing on which they differed was $100,000. It is unnecessary for me to say that if that is the only thing in the road they will get together. This latter information please consider confidential.

(Signed) DIAMOND GLUE COMPANY.
J. R. MORRON, *Manager.*

205 EXHIBIT 44.

W. N. Eisendrath & Company letter-head.

CHICAGO, *April 21st*, 1898.

Sold to J. Spiegel & Co., of Chicago, Ills., all the glue stock, fleshings, trimmings, etc., which we may produce at our tanneries for the period of twelve months, commencing May 1st, 1898, and ending April 30th, 1899, at the following prices:

Limed or soaked calf-glue stock.....	45	cents	per	115 lbs.
" " " fleshings.....	45	"	"	115 "
Calf and kip salted trimmings.....	$1.50	"	"	100 "
Limed or soaked horse-glue stock.....	40	"	"	120 "
" " " fleshings.....	20	"	"	120 "
Horsebutt shavings.....	35	"	"	120 "
Horsebutt fleshings.....	20	"	"	120 "

(Signed) W. N. EISENDRATH & CO.,
Per W. N. EISENDRATH, *Pres.*

Accepted.

(Signed) J. SPIEGEL & CO.

206 EXHIBIT 45.

Comparative Statement Cost of Manufacturing Glue by the U. S. Glue Company, Period July 25–November 4, 1899, Inclusive.

	U. S. Glue Company's figures.			U. S. Glue Co. figures, eliminating $100 a day.			Stock at mkt. prices, eliminating $100 a day.		
	Yield.	Expense.	Cost.	Yield.	Expense.	Cost.	Yield.	Expense.	Cost.
Wk. end. 7, 29	15,365	2,857.25	.1866	15,365	2,357.25	.1534	15,365	1,668.25	.1460
8, 5	23,949	4,300.61	.1795	23,949	3,700.61	.1545	23,949	2,473.61	.1328
8, 12	16,130	2,900.35	.18	16,130	2,300.35	.1426	16,130	1,376.85	.859
8, 19	29,494	4,589.68	.1555	29,194	3,989.68	.1235	29,494	2,663.90	.937
8, 26	38,485	5,227.95	.1359	38,485	4,627.95	.1200	38,485	3,324.22	.864
9, 2	.....	1,560.76	.....	.....	960.76	.....	.....	960.76	.....
9, 9	.....	1,339.84	.....	.....	739.84	.....	.....	739.84	.....
9, 16	.....	1,691.01	.....	.....	1,091.01	.....	.....	1,091.01	.....
9, 23	49,794	8,157.51	.1638	49,794	7,557.51	.1518	49,794	5,469.71	.1086
9, 30	55,849	8,678.23	.1553	55,849	8,078.23	.1446	55,849	5,757.88	.1030
10, 7	66,734	8,904.67	.1340	66,734	8,304.67	.1244	66,734	5,929.14	.888
10, 14	65,041	8,974.26	.1379	65,041	8,374.26	.1287	65,041	5,825.25	.896
10, 21	68,053	8,539.41	.1254	68,053	7,939.41	.1166	68,053	6,004.70	.882
10, 28	17,751	3,075.92	.1732	17,751	2,475.92	.1394	17,751	1,959.30	.1103
11, 4	57,763	8,425.25	.1458	57,763	7,825.25	.1354	57,763	5,478.42	.948
	504,408	79,222.70	.1570	504,408	70,322.70	.1394	504,408	50,599.87	.1002
Less grease shipped.....	.....	.....			14,894.71	.0296			
	504,408				55,427.99	.1098			
Less grease shipped.....	..	.	...	....	....	.....		14,894.71	.0296
	.....	.....		....		504,408		35,705.16	.0707

Prices of Stock.

Fleshings	40c.
Trimmings	1¼c.
Horse fleshings	35c.
Calf trimmings	1½c.
Shavings	1c.

207 The above and foregoing testimony, including the exhibits therein mentioned and hereto attached and made a part of this bill of exceptions, was all the evidence given on the trial on behalf of the plaintiff, and no testimony was given on behalf of defendant except the stipulation marked Exhibit A, hereinafter referred to, and reading as follows:

It is hereby stipulated for the purposes of this action that the above-named plaintiff is and was, on the 25th day of June, A. D. 1898, an Illinois corporation, and that it has never filed or caused to be filed in the office of the secretary of state of the State of Wisconsin any authenticated copy of its charter, articles of association or incorporation.

Dated February 15, 1901.

BANCROFT & ADAMS AND
MILLER, NOYES & MILLER,
Plaintiff's Attorneys.
QUARLES, SPENCE & QUARLES,
Defendant's Attorneys.

208 DEFENDANT'S COUNSEL: I am a little in the dark about the practice. I would like, without resting our case, to move for a direction of a verdict.

Judge NOYES: Is that permissible?

COURT: It is permissible sometimes; if there is some good reason for it. There may be a crucial point in this case which you may want to present. I do not see that there is any new proposition raised at this time. You may present your motion. The jury will be excused until 2 o'clock.

DEFENDANT'S COUNSEL: We would move, then, that a verdict be directed for the defendant on the ground that the plaintiff has introduced no evidence to sustain a verdict or upon which a verdict can be rendered in its favor, because, as it appears conceded in the record by stipulation filed, the plaintiff is a foreign corporation which has never filed any copy of its articles with the secretary of state of the State of Wisconsin.

COURT: Does it appear they have not been filed with the secretary of state, or do you argue that from the fact there is no proof?

Judge NOYES: There is a stipulation in the record. That was stipulated as a matter of evidence which has not been offered in the case.

Mr. QUARLES: It is filed in the case, a stipulation by both parties in the case, and I apprehend that becomes a part of the record as a part of the pleadings.

COURT: You may make the motion in full and then I will pass upon it.

209 DEFENDANT'S COUNSEL: Second, on the ground that the contract sued upon contains a stipulation essential to it, which is in restraint of trade and in violation of the statutes of Wisconsin preventing combinations or arrangements to restrict production of any article which is an article of commerce in the State.

Third. That it appears by the plaintiff's own proof that as the agent of the defendant it has been disloyal, in that it has not diligently and properly attempted to sell the output of the plant, but has represented competing concerns, in violation of the duty assumed by it as the agent of the defendant.

Fourth. That it appears by the plaintiff's proof that the defendant has violated its agreement to refrain from the manufacture of hide and calf glue, in that after the execution of the contract with the defendant the plaintiff undertook and carried on the manufacture of hide and calf glue in an establishment in Gowanda, New York, whose output was greater than the total amount sold of this kind of glue by the plaintiff.

Fifth. That the contract of the plaintiff, if it is to be construed other than a contract to manufacture, is *ultra vires* of the plaintiff—that is, if the contract is to be construed as constituting the plaintiff a factor or sales agent only it is *ultra vires*.

Sixth. That it appears from the plaintiff's proof that it had failed before the first of December, 1899, to perform the conditions on its part to be performed, namely, the sale of the output or of a substantial part of the output of the factory of the defendant, and repudiated

its obligation to sell, or that it was bound to sell, or that any obligation rested upon it in the premises.

210 Which motion was resisted by counsel for the plaintiff. Their arguments presented to the court, among others, the following points and objections, to wit:

First. That the statute referred to and set out in the answer of the defendant was void and inoperative under section 10 of article 1 of the Constitution of the United States as a law impairing the obligation of the contract sued upon by the plaintiff.

Second. That the statute referred to and mentioned in the answer of the defendant was void and inoperative as an infringement of section 8 of article 1 of the Constitution of the United States, inasmuch as it attempted to regulate commerce among the several States, and was an infringement of the interstate-commerce law as undertaking to regulate the transaction of interstate commerce between said plaintiff and said defendant and between said plaintiff and other parties.

Third. That the statute referred to and set out in the defendant's answer was void and inoperative and contrary to the provisions of section 2, article 14, of the Constitution of the United States, providing that the citizens of each State should be entitled to all the privileges and immunities of citizens in the several States.

Thereupon, after argument of said motion by the counsel of the respective parties, the court said:

211 COURT: I am well satisfied of one proposition—that it would be both time and expenses expended to go on with the testimony for the defense, which would undoubtedly take as long as to put in that on the part of the plaintiff, with the views I entertain of the effect of that statute as applied to the evidence in this case. I fail to see anything in the evidence as now presented inconsistent with the terms of that contract as made by the parties. I think it is perfectly clear in the light of the evidence, as I think it is in the terms of the contract, just what was the understanding of these parties and the purpose of their engagement. The defendants, as tanners operating here in Milwaukee and vicinity, were ready to furnish the capital to take care of their by-products—manufacture them into glue. They had no experience in that line, and they entered into an arrangement with these parties who had the trade and experience. The reservations, as I remember them in that contract, are very clear—that the Diamond Glue Company was to have the naming of the manager or person who was to run the factory, they to have the control of the product as it came out. They had the dictation of the policy of the factory. Now, that, it seems to me, is as unmistakably the transaction of business as terms can make it. They were here operating in Wisconsin, and that, I think, brought them directly within the provisions of that statute. I can conceive no reason for evading compliance with the statute and am strongly inclined to think it was an oversight. If so, I should regret exceedingly the result which seems to "knock them over," as it were, upon a purely technical ground of a failure to comply. If they were de-

liberate in their action and intended to evade the statute I
212 think they should well be sent out on that ground. My view is that the statute was and is as completely operative and bars them from any performance of the contract on their part after the first of September, and, that being so, that the defendant was authorized to treat the contract as at an end and as terminated, and that there could be no suit for breach of the contract maintained. I have been through the trial and the examination quite strongly impressed with another view, and that is, of the showing of the doing of business by the plaintiff, notwithstanding the contract, with other parties, which, it seemed to me, would be a business necessarily in antagonism to that of the defendant's in this case, and, if so, that of itself would be a breach on their part which would authorize the setting aside of the contract by the defendant. The testimony in that regard entirely appears on the plaintiff's showing and is undisputed—the fact of the transaction with the Gowanda Company. I deem it proper to allude to it, but it would make no difference with my ruling. I am satisfied that on the introduction of the stipulation showing the fact that there was no filing of the articles I shall have to direct a verdict. I will therefore permit the defendant to introduce that and to then rest.

Defendant's counsel offers in evidence the stipulation and it is marked Defendant's Exhibit A.

Defendant rests.

COURT: In accordance with the views expressed I shall have to direct the jury to bring in a verdict for the defendant.

Exception by plaintiff.

Judge NOYES: I suppose, your honor, it may appear in any
213 bill of exceptions—that the facts may appear just as they have taken place here in regard to the motion that was made and the argument and proceedings.

COURT: Certainly; showing that the motion of the defendant was made before resting.

Judge NOYES: At the close of our testimony they made the motion and the argument was made.

COURT: That is right; it should appear in that form.

COURT: Gentlemen of the jury, in accordance with the views as expressed by the court, there is nothing left for your determination. This comes up as a question of law entirely, and the court takes the responsibility of direction, and does direct that the jury find the issues for the defendant. Such will be your verdict, and you are excused from further consideration of the case.

To which decision of said court and the instruction given by said court to the jury to find the issues herein for the defendant and to each and every part of the decision of said court made upon the hearing of the motion of the said defendant to direct a verdict herein the said plaintiff, by its attorneys, did then and there duly except upon the following grounds, to wit:

1. That the statute referred to and set out in the answer of the defendant was void and inoperative under section 10 of article 1 of

the Constitution of the United States as a law impairing the obligation of the contract sued upon by the plaintiff.

2. That the statute referred to and mentioned in the answer of said defendant was void and inoperative as contrary to and an infringement of section 8, article 1, of the Constitution of the
214 United States, inasmuch as it attempted to regulate commerce among the several States, and an infringement of the interstate-commerce law, and as undertaking to regulate the transaction of interstate commerce between said plaintiff and said defendant and between said plaintiff and the various parties with which it transacted and should transact business under the contract set out in the plaintiff's amended complaint.

3. That the statute referred to and set out in the defendant's answer was void and inoperative and contrary to the provisions of section 2, article 4, and also of the fourteenth amendment of the Constitution of the United States, providing that the citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States, and that no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States nor deny to any person within its jurisdiction the equal protection of the laws.

4. Because said court overruled and decided against the claims and rights of the plaintiff in deciding that the statute of Wisconsin set out and referred to in the defendant's answer was constitutional and valid, in that it did not attempt in anywise to regulate commerce between the several States or to regulate the business or transactions carried on by said plaintiff under and by virtue of the contract set forth in the plaintiff's amended complaint, and in that said statute did not in anywise impair the obligation of the contract entered into by and between the plaintiff and defendant set forth in the plaintiff's amended complaint, and in that the plaintiff under said statute was entitled to all privileges and immunities of citizens in the several States.

215 5. Because said court upon the trial of said action and upon granting the motion to direct a verdict for the defendant decided that the statute referred to and set out in the defendant's answer covered the contract and transactions thereunder set out in the amended complaint of the plaintiff herein, and such transactions under said contract as shown by the evidence adduced upon the trial came within the provisions of said statute and were prohibited thereby unless the plaintiff had first filed a duly authenticated copy of its articles of organization with the secretary of state of the State of Wisconsin.

Said plaintiff further excepts to the decision of said court and the instruction given to the jury to find the issues herein for the defendant upon the ground that the court should not upon the evidence have directed a verdict for the defendant, but should have submitted the case upon such evidence to the jury.

MILLER, NOYES & MILLER,
Plaintiff's Attorneys.

And thereupon the said plaintiff filed its motion to set aside the verdict and to grant a new trial herein, as follows:

Now comes the above-named plaintiff, by Miller, Noyes & Miller, its attorneys, and moves said court, upon the minutes of the judge thereof and during the same term of court, to set aside the verdict herein and grant a new trial for the reasons:

First. Because said verdict is contrary to the law.

Second. Because the verdict is contrary to the evidence.

Third. Because of the errors in the rulings of said court and the exceptions of the plaintiff thereto.

216 Fourth. Because said verdict should not have been directed by the court; that the case should have been submitted to the jury.

Fifth. Because said court upon the motion to direct the jury to find a verdict for the defendant herein overruled and denied the claims and rights of the plaintiff herein in the following respects, to wit:

(1.) That the statute referred to and set out in the answer of the defendant was void and inoperative under section 10 of article 1 of the Constitution of the United States as a law impairing the obligation of the contract sued upon by the plaintiff.

(2.) That the statute referred to and mentioned in the answer of said defendant was void and inoperative as contrary to and an infringement of section 8, article 1, of the Constitution of the United States, inasmuch as it attempted to regulate commerce among the several States, and an infringement of the interstate-commerce law, and as undertaking to regulate the transaction of interstate commerce between said plaintiff and said defendant and between said plaintiff and the various parties with which it transacted and should transact business under the contract set out in the plaintiff's amended complaint.

(3.) That the statute referred to and set out in the defendant's answer was void and inoperative and contrary to the provisions of section 2, article 4, and also of the fourteenth amendment of the Constitution of the United States, providing that the citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States, and that no State shall make or enforce any law which shall abridge the privileges or immunities of citi-

217 zens of the United States nor deny to any person within its jurisdiction the equal protection of the laws.

Sixth. Because said court overruled and decided against the claims and rights of the plaintiff in deciding that the statute of Wisconsin set out and referred to in the defendant's answer was constitutional and valid, in that it did not attempt in anywise to regulate commerce between the several States or to regulate the business or transactions carried on by said plaintiff under and by virtue of the contract set forth in the plaintiff's amended complaint, and in that said statute did not in anywise impair the obligation of the contract entered into by and between the plaintiff and defendant, set forth in the plaintiff's amended complaint, and in that the

plaintiff, under said statute, was entitled to all privileges and immunities of citizens in the several States.

Seventh. Because said court, upon the trial of said action and upon granting the motion to direct a verdict for the defendant, decided that the statute referred to and set out in the defendant's answer covered the contract and transactions thereunder set out in the amended complaint of the plaintiff herein, and such transactions under said contract, as shown by the evidence adduced upon the trial, came within the provisions of said statute, and were prohibited thereby unless the plaintiff had first filed a duly authenticated copy of its articles of organization with the secretary of state of the State of Wisconsin.

MILLER, NOYES & MILLER,
Plaintiff's Attorneys.

Whereupon the court denied said motion to set aside the verdict and grant a new trial herein as follows:

218 The motion of the plaintiff to set aside the verdict herein and grant a new trial for the reasons specified in the written motion herein having come on to be heard, Messrs. Miller, Noyes & Miller appearing on behalf of the plaintiff and Messrs. Quarles, Spence & Quarles on behalf of the defendant, the court, upon consideration thereof, decides that said plaintiff is not entitled to have said verdict set aside and a new trial herein upon any of the grounds set forth in said motion, and expressly overrules the same, and thereupon denies said plaintiff's motion to set aside the verdict and grant a new trial herein.

Dated April 22d, 1901.

By the court:

WM. H. SEAMAN, *Judge.*

Whereupon said plaintiff duly excepted to the order of said court, overruling and denying its motion to set aside the verdict and grant a new trial herein, as follows:

Now comes the above-named plaintiff, by Miller, Noyes & Miller, its attorneys, and excepts to the order of said court overruling and denying its motion to set aside the verdict and to grant a new trial herein, upon the grounds stated in said written motion on file, and excepts to the order of said court deciding that the statute of the State of Wisconsin referred to and set out in the defendant's answer herein is constitutional and valid and not contrary to any of the provisions of the Constitution of the United States, and that such statute covered the contract and transactions set out in the plaintiff's amended complaint and the transactions disclosed by the evidence upon the trial herein, and that the plaintiff violated the pro-
219 visions of said statute in entering into the contract set forth in the amended complaint and in the transacting of the business disclosed upon the trial of said action.

Said plaintiff further excepts to the order denying its motion to set aside the verdict and grant a new trial herein, for the reason

that the court erred in directing a verdict for the defendant and erred in not submitting the case upon the evidence adduced to the jury for its determination.

MILLER, NOYES & MILLER,
Plaintiff's Attorneys.

And because the foregoing testimony, decisions, rulings, opinions, exceptions, and other proceedings do not appear of record herein, and the said plaintiff desires to make the same a matter of record and to have the same appear in a bill of exceptions herein, I, William H. Seaman, judge of said court, before whom said trial was held, do hereby certify that the above and foregoing was all the testimony adduced upon the trial herein, and that the above and foregoing testimony was taken, and that the rulings, decisions, opinions, exceptions, and other proceedings were duly had and taken, as appears in and by the above and foregoing bill of exceptions, and that the same are made part of the record herein, and that I have signed the same as constituting the bill of exceptions herein.

In witness whereof I have hereunto set my hand this 6th day of May, A. D. 1901.

(Signed) WM. H. SEAMAN, *Judge.*

220 MAY 11, 1901.

This day came the plaintiff, by its attorneys, and filed its assignment of errors and petition for writ of error, which are as follows:

Assignment of Errors.

Circuit Court of the United States for the Eastern District of Wisconsin.

DIAMOND GLUE COMPANY, Plaintiff in Error,
vs.
UNITED STATES GLUE COMPANY, Defendant in Error.

Afterward, to wit, on the 11th day of May, 1901, in this same term, comes the said plaintiff in error above named, by its counsel, George H. Noyes, and says that in the record and proceedings aforesaid there is manifest error, in this, to wit:

First. That the answer of the defendant in error and the matters therein contained are not sufficient in law for a defense to the action of said plaintiff in error against said defendant in error.

Second. That the judgment aforesaid given was given for the said United States Glue Company against the said Diamond Glue Company, whereas by the law of the land the said judgment ought to have been given for the said Diamond Glue Company against the said United States Glue Company.

Third. Said circuit court erred in holding that the certain statute of the State of Wisconsin described in the answer of the defendant

in error, being section 1770*b* of the Wisconsin Statutes of
221 1898, was sufficient in law for a defense to said action of said plaintiff in error.

Fourth. Said circuit court erred in holding that said statute of Wisconsin, to wit, said section 1770*b* of Wisconsin Statutes of 1898, applied to or covered the said contract between said plaintiff in error and said defendant in error.

Fifth. Said circuit court erred in holding that said section 1770*b* of the Wisconsin Statute- of 1898 applied to or covered the actions and transactions of said plaintiff in error under and in pursuance of said contract, as said contract and said actions and transactions appeared from the evidence upon the trial of said cause.

Sixth. Said circuit court erred in holding that said contract, as described in the complaint of the plaintiff in error, and the actions of the plaintiff in error under and in the performance of said contract, as the same appeared from the evidence, were in violation of and were contravened by the prohibition of said section 1770*b* of the Wisconsin Statutes of 1898.

Seventh. Said circuit court erred in refusing to hold that said statute of the State of Wisconsin referred — and set out in the answer of defendant in error was and is void and inoperative under section 10 of article 1 of the Constitution of the United States, as a law impairing the obligation of the contract sued upon by the plaintiff in error.

Eighth. Said circuit court erred in refusing to hold that the statute referred to and set out in the answer of the defendant was and is void and inoperative as to the plaintiff in error's said cause of
222 action, because contrary to and an infringement of section 8 of article 1 of the Constitution of the United States, inasmuch as the effect of said statute as applied by said circuit court to said plaintiff in error's cause of action, as shown by the evidence, was a regulation of or an attempt to regulate commerce between the several States, to wit, the interstate commerce between the said plaintiff in error and the defendant in error and between the said plaintiff in error and the various parties with whom it transacted and would have transacted interstate commerce under said contract.

Ninth. Said circuit court erred in refusing to hold the said statute referred to and set out in the answer of the defendant in error was void and inoperative as to the plaintiff in error's cause of action, as shown by the evidence, because the transactions between the said plaintiff in error and said defendant in error and between said plaintiff in error and the various parties with which it had transacted and would have transacted business under the terms of said contract set out in the plaintiff's amended complaint were interstate commerce.

Tenth. Said circuit court erred in refusing to hold that said statute referred to and set out in the defendant's answer was void and inoperative because contrary to the provisions of section 2, article 4, of the Constitution of the United States, providing that the citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States.

Eleventh. Said circuit court erred in refusing to hold that said

statute referred to and set out in the defendant's answer was and is void and inoperative because contrary to the provisions of the
223 14th amendment of the Constitution of the United States, providing that no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States nor deny to any person within its jurisdiction the equal protection of the law.

Twelfth. Said circuit court erred in holding against the claims and rights of said plaintiff in error that the said statute of Wisconsin, set out and referred to in the defendant's answer, was constitutional and valid because it did not attempt in anywise to regulate commerce between the several States or to regulate business or transactions carried on or to be carried on by said plaintiff in error under and by virtue of the contract set out in the amended complaint of the plaintiff in error, and because said statute did not in anywise impair the obligation of the contract entered into by and between plaintiff in error and the defendant in error set forth in the amended complaint of the plaintiff in error and shown by the evidence, and in that the plaintiff in error and all persons affected by said statute were entitled to all the privileges and immunities of citizens in the several States and in the State of Wisconsin.

Thirteenth. Said circuit court erred upon the trial of said action in granting the motion of the defendant and directing a verdict for the defendant.

Fourteenth. Said circuit court erred in refusing to hold upon defendant's motion for a peremptory instruction that the defendant by its acts and conduct in the premises, as shown by the evidence, had waived the right, if any it had, to set up said statute of Wisconsin as a defense to or excuse for the breach of said contract.

224 Fifteenth. Said circuit court erred in applying the provisions of the statute of Wisconsin, as set out and referred to in defendant's answer, said statute being no longer in force, as in said answer set out, at the time of the breach by the defendant of the contract sued on.

Sixteenth. Said circuit court erred in overruling the demurrer of the plaintiff in error to that part of the answer of the defendant in error purporting to allege as a defense the statute of the State of Wisconsin known as section 1770*b* of the Statutes of Wisconsin for the Year 1898.

Seventeenth. Said circuit court erred in permitting the counsel for the defendant in error to move for a direction of a verdict in favor of the defendant in error without first resting his cause.

Eighteenth. There is also error in this, to wit, that the court permitted counsel for defendant in error to argue a motion to direct a verdict after the testimony on behalf of the plaintiff in error was closed, and thereupon the court decided said motion in favor of defendant in error, and then permitted the defendant in error to introduce certain evidence, to wit, the stipulation in the bill of exceptions, marked "Defendant's Exhibit A," to the effect that the plaintiff in error was on the 25th day of June, 1898, an Illinois corporation, and that it had never filed or caused to be filed in the office of the

secretary of state of the State of Wisconsin any authenticated copy of its charter, articles of association or incorporation, and that upon filing such stipulation the court directed a verdict for the defendant.

225 Nineteen. There is also error in this, to wit, that the said court decided, against the claim and contention on the part of the defendant in error made upon the trial of the action, that section 1770*b* of the Statutes of Wisconsin for the Year 1898, set forth in the defendant's answer, was not in contravention of the Constitution of the United States or of any provision thereof.

Wherefore the plaintiff in error prays that the judgment of the United States circuit court for the eastern district of Wisconsin aforesaid may be reversed, annulled, and altogether held for nothing, and that said plaintiff in error may be restored to all things which it has lost by occasion of said judgment.

BANCROFT & ADAMS AND
MILLER, NOYES & MILLER,
Attorneys for Diamond Glue Company.

GEORGE H. NOYES, *Of Counsel.*

The aforesaid assignments of error were duly presented to me this 11th day of May, 1901, before allowing the said writ of error in said cause of even date.

(Signed) WM. H. SEAMAN,
District Judge.

Petition for Writ of Error.

United States Circuit Court, Eastern District of Wisconsin.

DIAMOND GLUE COMPANY, Plaintiff,
vs.
UNITED STATES GLUE COMPANY, Defendant.

The petition of the above-named plaintiff, Diamond Glue Company, herein respectfully shows:

226 That judgment was entered on the 22d day of April, 1901, that plaintiff take nothing by its writ, and that the defendant have and recover its costs against said plaintiff, the full record of which cause embracing the whole proceedings therein, including the bill of exceptions, now remains before said court, and that in said suit and final judgment there was involved the construction and application of the Constitution of the United States, and also the claim on the part of said plaintiff that a law of the State of Wisconsin was in contravention of the Constitution of the United States, and that upon the trial of said action it was claimed and contended on behalf of said plaintiff that the statute of the State of Wisconsin set out in the defendant's answer was void and inoperative under sections 8 and 10 of article 1 of the Constitution of the United States, and also under section 2 of article 4, and also the fourteenth amendment to the Constitution of the United States, all of which

said claims and contentions on the part of the said plaintiff were overruled and denied by said court and the decision of which said court was against the rights and claims so made on behalf of said plaintiff, all of which will more particularly appear in the record of said court and in the assignment of errors herewith presented and filed herein.

Wherefore your petitioner prays for a writ of error from the said circuit court of the United States for the eastern district of Wisconsin to the Supreme Court of the United States, to the end that such errors and all errors appearing of record, if any there be, may be corrected.

Dated this 11th day of May, 1901.

BANCROFT & ADAMS AND
MILLER, NOYES & MILLER,
Attorneys for Diamond Glue Company.

GEORGE H. NOYES, *Of Counsel.*

227 *Order.*

United States Circuit Court, Eastern District of Wisconsin.

DIAMOND GLUE COMPANY, Plaintiff,
vs.
UNITED STATES GLUE COMPANY, Defendant.

Upon motion of Miller, Noyes & Miller, attorneys for plaintiff, and upon filing a petition for a writ of error and an assignment of errors—

It is ordered that a writ of error be, and hereby is, allowed, to have reviewed in the United States Supreme Court the judgment heretofore entered herein, and that the amount of bond on said writ of error be, and hereby is, fixed at five hundred dollars ($500).

Dated May 11, 1901.

By the court:

(Signed) WM. H. SEAMAN, *Judge.*

228 And same day bond of the plaintiff, in the sum of five hundred dollars, with National Surety Company as surety, filed as follows:

Bond.

In Supreme Court of the United States.

DIAMOND GLUE COMPANY, Plaintiff in Error,
vs.
UNITED STATES GLUE COMPANY, Defendant in Error.

Know all men by these presents that we, Diamond Glue Company, a corporation organized under the laws of the State of Illinois, principal, and National Surety Company, a corporation organized under the laws of the State of New York, and authorized to do busi-

ness in the States of Wisconsin and Illinois, and to execute this bond as surety, are held and firmly bound unto the United States Glue Company, its successors and assigns, in the sum of five hundred dollars ($500), to be paid to said United States Glue Company, its successors and assigns; for which payment, well and truly to be made, we bind ourselves, our and each of our successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated and executed this eighth day of May, A. D. 1901.

Whereas the above-named Diamond Glue Company hath prosecuted a writ of error to the United States circuit court for the eastern district of Wisconsin to reverse a judgment rendered in favor of said obligee against the said Diamond Glue Company in said court, directed to said court:

229 Now, therefore, the condition of this obligation is such that if the above-named Diamond Glue Company shall prosecute its said writ of error to effect and answer all damages and costs if it shall fail to make good its plea, then this obligation shall be void; otherwise the same shall remain in full force and virtue.

DIAMOND GLUE COMPANY,
[SEAL.] By JONAS SPIEGEL, *Its President.*
MILLER, NOYES & MILLER, *Its Attorneys.*

Attest: ARNOLD FRESHMAN, JR., *Sec'y.*

NATIONAL SURETY COMPANY, [SEAL.]
By ADAMS A. GOODRICH,
Its Resident Vice-President.
CYRUS W. GEORGE,
Resident Ass't Secretary.

I approve of the foregoing bond and of the sufficiency of the surety therein, and accept the same as good and sufficient security upon the writ of error in the foregoing entitled cause.

Dated May 11, 1901.

(Signed) WM. H. SEAMAN,
District Judge.

(Int. rev. stamp.)

Whereupon a writ of error and citation issued, returnable on the 10th day of June next, and a copy of said writ of error lodged, in pursuance of the statute, for the defendant in error.

230 UNITED STATES OF AMERICA, } ss:
Eastern District of Wisconsin, }

I, Edward Kurtz, clerk of the circuit court of the United States of America for the eastern district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate with their originals now on file and remaining of record in my office, and that they are true copies of such originals and correct transcripts therefrom, and that the same is a true copy of the record, bill

of exceptions, assignment of errors, and all proceedings in the case of Diamond Glue Company *vs.* United States Glue Company.

In testimony whereof I have hereunto set my hand and duly affixed the seal of the said court, at the city of Milwaukee, in said district, this 3rd day of June, in the year of our Lord one thousand nine hundred and one, and of the Independence of the United States the 125th.

Seal U. S. Circuit Court, Eastern District Wisconsin.

EDWARD KURTZ, *Clerk.*

{Ten-cent United States internal revenue stamp, canceled June 3, 1901. E. K.}

231 United States Circuit Court, Eastern District of Wisconsin.

DIAMOND GLUE COMPANY, Plaintiff,
vs.
UNITED STATES GLUE COMPANY, Defendant.

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the United States circuit court for the eastern district of Wisconsin, Greeting:

Because in the record and proceedings, as also in the rendition of the final judgment of the circuit court of the United States for the eastern district of Wisconsin, the whole record in which is before you, between The Diamond Glue Company, plaintiff, and The United States Glue Company, defendant, wherein it was claimed that a statute of the State of Wisconsin was in contravention of the Constitution of the United States, and that the case involved the construction and application of the Constitution of the United States, and the judgment of said court, duly entered, was to the effect that the plaintiff take nothing by its said writ, and that the defendant have and recover its costs against the plaintiff, to the great
232 prejudice and damage of the said plaintiff, as is said and appears by the petition herein, we, being willing that error, if any hath been, should be fully corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the 10th day of June, 1901, in said Supreme Court, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause to be further done to correct those errors what of right and according to the laws and customs of the United States should be done.

Witness the Hon. Melville W. Fuller, Chief Justice of the said Supreme Court, this 11 day of May, 1901, and of the Independence of the United States the one hundred and twenty-fifth.

Attest my hand and the seal of the United States circuit court for the eastern district of Wisconsin, at the clerk's office, at Milwaukee, Wisconsin, on the day and year last above written.

[Seal U. S. Circuit Court, Eastern District Wisconsin.]

EDWARD KURTZ,
Clerk of the United States Circuit Court for the Eastern District of Wisconsin.

233 Allowed by me this 11th day of May, A. D. 1901.

WM. H. SEAMAN,
District Judge.

233½ [Endorsed:] U. S. circuit court, E. dist. of Wisconsin. Diamond Glue Company *v.* United States Glue Company. Writ. Original. Filed May 11, 1901. Edw. Kurtz, clerk. Miller, Noyes, Miller & Wahl.

234 United States Circuit Court, Eastern District of Wisconsin.

DIAMOND GLUE COMPANY, Plaintiff,
vs.
UNITED STATES GLUE COMPANY, Defendant.

The United States of America to the said defendant, United States Glue Company, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington, on the 10th day of June, A. D. 1901, next, pursuant to a writ of error filed in the office of the clerk of the circuit court of the United States for the eastern district of Wisconsin, at the office of the clerk of said court, in the city of Milwaukee, in the said State of Wisconsin, wherein The Diamond Glue Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the final judgment against the said plaintiff in error, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Hon. William H. Seaman, judge of the United States circuit court for the eastern district of Wisconsin, at Mil-
235 waukee, Wisconsin, this 11 day of May, in the year of our Lord one thousand nine hundred and one.

WM. H. SEAMAN,
District Judge.

We hereby accept service of the above citation this 11th day of May, 1901.

QUARLES, SPENCE & QUARLES,
Defendant's Attorneys.

235½ [Endorsed:] U. S. circuit court, E. dist. of Wisconsin. Diamond Glue Company *v.* United States Glue Company. Citation. Original. Miller, Noyes, Miller & Wahl.

236 In the Supreme Court of the United States.

DIAMOND GLUE COMPANY, Plaintiff in Error,
vs.
UNITED STATES GLUE COMPANY, Defendant in Error.

It is hereby stipulated by and between the parties hereto that the clerk of said court may omit printing from the record herein the following pages thereof, to wit:

In Exhibit 1, pages 129 to 132, inclusive, and page 134.

Exhibit 42, being all of pages 189 to 203, inclusive.

Dated June 26, 1901.

GEO. H. NOYES,
Counsel for Plaintiff in Error.
J. V. QUARLES &
GEO. LINES,
By CHAS. QUARLES,
Counsel for Defendant in Error.

237 [Endorsed:] In Supreme Court of the United States. Diamond Glue Company *v.* U. S. Glue Company. Stipulation. Original. Miller, Noyes, Miller & Wahl, 102 Wisconsin street, Milwaukee, Wis.

238 [Endorsed:] File No., 18,202. Supreme Court U. S., October term, 1901. Term No., 349. The Diamond Glue Company, P. E., *vs.* The United States Glue Company. Stipulation to omit parts of record in printing. Filed June 29, 1901.

Endorsed on cover: File No., 18,202. E. Wisconsin C. C. U. S. Term No., 349. The Diamond Glue Company, plaintiff in error, *vs.* The United States Glue Company. Filed June 14, 1901.